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A

MANUAL

M'Elwee. H.R.

OF

LEGISLATIVE PRACTICE

AND

ORDER OF BUSINESS

IN

DELIBERATIVE BODIES.

SECOND EDITION.

BY JOEL B. SUTHERLAND.

PHILADELPHIA:

Printed by Peter Hay & Co. 22 Walnut street.

1830.

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Eastern District of Pennsylvania, to wit:

BE it remembered, that on the fifth day of December, in the fifty-second year of the Independence of the United States of America, A. D. 1827, ROBERT DESILVER, of the said District, hath deposited in this office, the title of a book, the right whereof he claims as proprietor in the words following, to wit:

"A Manual of Legislative Practice, and Order of Business in Deliberative Bodies. By Joel B. Sutherland."

In conformity to the Act of the Congress of the United States, intituled, "An Act for the Encouragement of Learning, by securing the Copies of Maps, Charts, and Books, to the Authors and Proprietors of such Copies, during the times therein mentioned.—And also to the Act, entitled, "An Act supplementary to an Act, entitled 'An Act for the Encouragement of Learning, by securing the Copies of Maps, Charts, and Books, to the Authors and Proprietors of such Copies during the times therein mentioned,' and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints."

D. CALDWELL,

Clerk of the Eastern District of Pennsylvania.

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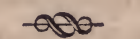


This work contains the Constitution of the United States and of Pennsylvania, the whole of Mr. Sutherland's Manual, corrected up to the present session, the Rules of both Houses of Congress, and the Manual of Mr. Jefferson. It will therefore be a very useful assistant to old as well as new members of our State Legislatures; embracing as it does, a mass of important Parliamentary Practice, worthy the attention of every Representative desirous of serving his constituents with ability and fidelity.

PREFACE.

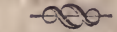
HAVING for several years occupied a seat in the House of Representatives of Pennsylvania, and having presided over that body and since served as State Senator, it occurred to me, that a work on the Practice and Method of proceeding adopted in the two branches of the General Assembly would not be unacceptable to the members. The excellent Manual of Thomas Jefferson contains the landmarks of order, and must always be a useful guide; but it is well known to all conversant with the business of public bodies, that it does not supply all that is wanting to State Legislatures. The Manual I present is intended as far as practicable to explain the detail so necessary to a new member, and to note the exact words which custom has sanctioned in the order of business. In the short time allotted for this work, it cannot be expected to be perfect; yet I shall be greatly disappointed, if it does not prove serviceable to the members.

THE

CONSTITUTION

OF THE

UNITED STATES OF AMERICA.



We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America. [*See* 1 *Wheat.* 324. 4 *Wheat.* 403.]

ARTICLE I.

OF THE LEGISLATURE.

Section I. All legislative powers, herein granted, shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Sect. II. 1. The House of Representa-

tives shall be composed of members chosen every second year, by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

2. No person shall be a representative, who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned, among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall

have at least one representative; and, until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three. [*See* 5 *Wheat.* 317.]

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their Speaker, and other officers, and shall have the sole power of impeachment.

SECT. III. 1. The Senate of the United States shall be composed of two Senators from each state, chosen by the legislature thereof for six years; and each Senator shall have one vote. [*See* 6 *Wheat.* 390.]

2. Immediately after they shall be assembled, in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year; of the second class

at the expiration of the fourth year; and of the third class at the expiration of the sixth year; so that one third may be chosen every second year. And if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments, until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a Senator, who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

4. The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is

tried, the Chief Justice shall preside. And no person shall be convicted, without the concurrence of two thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust or profit, under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment, according to law.

SECT. IV. 1. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators.

2. Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall, by law, appoint a different day.

SECT. V. 1. Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business;

but a smaller number may adjourn from day to day, and may be authorised to compel the attendance of the absent members, in such manner, and under such penalties, as each House may provide.

2. Each House may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two thirds, expel a member. [*See* 1 *Hall's Am. Law Jour.* 459.]

3 Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of members of either House, on any question, shall, at the desire of one fifth of those present, be entered on the journal.

4. Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place, than that in which the two Houses shall be sitting.

SECT. VI. 1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony, and

breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to, and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either House, during his continuance in office.

SECT. VII. 1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

2. Every bill, which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed

to reconsider it. If, after such reconsideration, two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be re-considered, and, if approved by two thirds of that House, it shall become a law. But in all such cases, the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless Congress, by their adjournment, prevent its return, in which case it shall not be a law.

3. Every order, resolution or vote, to which the concurrence of the Senate and House of Representatives may be necessary, (except on a question of adjournment) shall be presented to the President of the United States, and, before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be re-passed by two thirds of the Senate and House of Representatives, according to

the rules and limitations prescribed in the case of a bill.

SECT. VIII. Congress shall have power—

1. To lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence and general welfare of the United States; but all duties, imposts and excises, shall be uniform throughout the United States; [*See* 5 *Wheat.* 317.]

2. To borrow money on the credit of the United States;

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes; [*See* 9 *Wheat.* 1. 2 *Hall's Am. L. Jour.* 255, 272. 17 *Johns.* 488.]

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States; [*See* 4 *Wheat.* 122, 192, 209. 2 *Wheat.* 269. 20 *Johns.* 693.]

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

6. To provide for the punishment of counterfeiting the securities and current coin of the United States;

7. To establish post offices and post roads;

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries; [*See* 3 *Wheat. App. n.* 2, *p.* 13. 7 *Wheat.* 356.]

9. To constitute tribunals inferior to the supreme court;

10. To define and punish piracies and felonies committed on the high seas, and offences against the laws of nations; [5 *Wheat.* 184, 153, 76. 3 *Wheat.* 336.]

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water; [8 *Cranch*, 110, 154.]

12. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years;

13. To provide and maintain a navy; [*See* 1 *Mason*, 79, 81. 4 *Binn.* 487.]

14. To make rules for the government and regulation of the land and naval forces;

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions; [5 *Wheat.* 1. 19 *Johns* 7.]

16. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress; [3 *S. and R.* 169. 5 *Wheat.* 1. 19 *Johns.* 7.]

17. To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States; and to exercise like authority over all places, purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings;—and [*See* 2 *Mason*, 60. 5 *Wheat.* 317, 324. 6 *Wheat.* 440. *Jour. of Jurisp.* 47, 56. 17 *Johns.* 225.]

18. To make all laws which shall be necessary and proper, for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government

of the United States, or in any department or officer thereof. [4 *Wheat.* 413. 6 *Wheat.* 204.]

SECT. IX. 1. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by Congress, prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless, when in cases of rebellion or invasion, the public safety may require it.

3. No bill of attainder, or *ex post facto* law, shall be passed. [*See* 3 *Dallas*, 386, 396. 6 *Binn.* 271.]

4. No capitation or other direct tax, shall be laid, unless in proportion to the census or enumeration, herein before directed to be taken. [*See* 5 *Wheat.* 317. 3 *Dall.* 171.]

5. No tax or duty shall be laid on articles exported from any state. No preference shall be given, by any regulation of commerce or revenue, to the ports of one state over those of another; nor shall vessels bound to or from

one state, be obliged to enter, clear, or pay duties in another.

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

7. No title of nobility shall be granted by the United States; and no person, holding any office of profit or trust under them, shall, without the consent of Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

SECT. X. 1. No State shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts; or grant any title of nobility. [*See* 8 *Wheat.* 84, 92, 256, *n.* 464. 5 *Wheat.* 420. 4 *Wheat.* 518, 122, 209. 6 *Wheat.* 131. 16 *Johns.* 233. 13 *Mass.* 16. 7 *Johns. Ch. R.* 297. 2 *Cowen*, 626.]

2. No state shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the nett produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of Congress. No state shall, without the consent of Congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

OF THE PRESIDENT.

SECT. I. 1. The Executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows:

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the state may be entitled in Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

(3. The electors shall meet in their respective states and vote by ballot, for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of the persons voted for, and the number of votes for each; which list they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of Repre-

sentatives shall immediately choose, by ballot, one of them for President; and if no person have a majority, then, from the five highest on the list, the said House shall, in like manner, choose the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote: A quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more, who have equal votes, the Senate shall choose from them, by ballot, the Vice-President. [*This clause altogether altered and supplied by the* XII*th amendment.*]

4. Congress may determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same thoughout the United States.

5. No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of President; neither

shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States. [*So also as to the Vice-President. See* XII*th amendment, post.*]

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President; and Congress may, by law, provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability, be removed, or a President shall be elected.

7. The President shall at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected; and he shall not receive within that period, any other emolument from the United States, or any of them.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will

faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

SECT. II. 1. The President shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But Congress may, by law, vest the appointment of such inferior

officers as they think proper in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

SECT. III. He shall, from time to time, give to Congress information of the state of the Union, and recommend to their consideration such measures, as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and, in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors, and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States. [1 *Cranch*, 137.]

SECT. IV. The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

OF THE JUDICIARY.

SECT. I. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may, from time to time, ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office. [*See 7 Johns. Ch. R.* 303.]

SECT. II. 1. The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state claiming lands un-

der grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects. [*See* 2 *Dall.* 297. 6 *Wheat.* 264, 405. 2 *Mason,* 472. 9 *Wheat.* 819.]

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as Congress shall make. [5 *S. and R.* 545. 1 *Binn.* 138.]

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as Congress may by law have directed.

SECT. III. 1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same

overt act, or confession in open court.—[4 *Cranch, App. Note B.* 470, 126.]

2 Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

OF STATE RECORDS.

SECT. I. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof. [*See 7 Cranch,* 481. 3 *Wheat.* 234. 1 *Peters,* 81, 352. 6 *Wheat.* 129.)

OF CITIZENSHIP.

SECT. II. 1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.* (*See* 4 *Johns. Ch. R.* 430.)

* *Note* Free negroes and mulatoes are not citizens within the meaning of the Consitution. 1 *Litt.* 333.

OF FUGITIVES FROM JUSTICE.

2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime. [*See* 4 *Johns. Ch. R.* 106.]

OF FUGITIVE SLAVES.

3. No person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up, on the claim of the party to whom such service or labour may be due. [*See* 2 *S. and R.* 306. 3 *S. and R.* 4. 5 *S. and R.* 62.]

OF THE ADMISSION OF NEW STATES.

SECT. III. 1. New states may be admitted by Congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent

of the legislatures of the states concerned, as well as of Congress.

OF TERRITORIES.

2. Congress have power to dispose of, and make all needful rules and regulations respecting the territory, or other property, belonging to the United States; and nothing in this Constitution shall be so construed, as to prejudice any claims of the United States, or of any particular state.

OF STATE FORMS OF GOVERNMENT.

SECT. IV. The United States shall guarantee to every state in this Union, a republican form of government, and shall protect each of them against invasion; and, on application of the legislature, or of the executive, (when the legislature cannot be convened) against domestic violence.

ARTICLE V.

OF AMENDMENTS TO THE CONSTITUTION.

Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the

application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid, to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by Conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by Congress: *Provided*, That no amendment, which may be made prior to the year one thousand, eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

OF PUBLIC DEBT.

SECT. I. All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

OF THE SUPREME LAW OF THE LAND.

SECT. II. This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

OF THE CONSTITUTIONAL OATH, AND A RELIGIOUS TEST.

SECT. III. The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office, or public trust, under the United States.

ARTICLE VII.

The ratification of the Conventions of nine states shall be sufficient for the establishment

of this Constitution, between the states so ratifying the same.

Done in Convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord, one thousand seven hundred and eighty-seven, and of the Independence of the United States of America, the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON, *President*, and Deputy from Virginia.

New Hampshire.

John Langdon,
Nicholas Gilman.

Massachusetts.

Nathaniel Gorham,
Rufus King.

Connecticut.

William Samuel Johnson,
Roger Sherman.

New York.

Alexander Hamilton.

New Jersey.

William Livingston,
David Brearly,

William Patterson,
Jonathan Dayton.

Pennsylvania.

Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimmons,
Jared Ingersoll,
James Wilson,
Gouverneur Morris.

Delaware.

George Read,
Gunning Bedford, Jun.
John Dickinson,
Richard Bassett,
Jacob Broom.

Maryland.

James M'Henry,
Daniel of St. Tho. Jenifer,
Daniel Carroll.

Virginia.

John Blair,
James Madison, Jun.

North Carolina.

William Blount,
Richard Dobbs Spaight,

Hugh Williamson.

South Carolina.

John Rutledge,
Charles Cotesworth Pinkney,
Charles Pinkney,
Pierce Butler.

Georgia.

William Few,
Abraham Baldwin.

Attest, WILLIAM JACKSON, *Sec'ry.*

AMENDMENTS.

The following articles proposed by Congress, in addition to, and amendment of the Constitution of the United States, having been ratified by the legislatures of two thirds of the states, are become a part of the Constitution.

First Congress, First Session, March 5, 1789.

ART. 1. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. (*See* 3 *Yeates,* 520.)

ART. 2. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ART. 3. No soldier shall in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ART. 4. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. [3 *Cranch*, 448, 453. 6 *Binn*. 316.]

ART. 5. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself; nor be

deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation. [18 *Johns.* 187. 3 *Yeates*, 362. 6 *Binn.* 509. 2 *Dall.* 312. 2 *Johns. Ch. R.* 164. 1 *S. and R.* 382.]

ART. 6. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour; and to have the assistance of counsel for his defence.

ART. 7. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law. [*See* 8 *Wheat.* 674.]

ART. 8. Excessive bail shall not be required, nor excessive fine imposed, nor cruel and unusual punishments inflicted.

ART. 9. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ART. 10. The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Third Congress, second Session, Dec. 2, 1793.

ART. 11. The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state. (*See* 6 *Wheat.* 405.)

Eighth Congress, first Session, Oct. 17, 1803.

ART. 12. The electors shall meet in their respective states, * and vote by ballot, for President and Vice President; one of whom at least shall not be an inhabitant of the same state with themselves; they shall name in their ballots, the person voted for as President, and, in distinct ballots, the person voted

* On the first Wednesday in December, by Act of Congress, 1st March, 1792.

for as Vice President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed, * to the seat of the government of the United States, directed to the president of the Senate; the president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, † and the votes shall then be counted; the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed. And if no person have such majority, then, from the persons having the highest numbers, not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President; but in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority

* Before the first Wednesday in January, by the same act.

† On the second Wednesday in Febpuary, by the same act.

of all the states shall be necessary to a choice; and if the House of Representatives shall not choose a president, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disabity of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then, from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President, shall be eligible to that of Vice-President of the United States.

(*The following article was proposed by Congress to the several states for their adoption as part of the Constitution, and has been ratified by the state of Pennsylvania, and some of the other states, but had not, in March* 1825, *been*

ratified by the number of states required by the fifth article of the Constitution, and is therefore as yet, no part of the Constitution of the United States.)

Eleventh Congress, second Session, November 27th, 1809.

ART. 13. If any citizen of the United States shall accept, claim, receive or retain any title of nobility or honour, or shall, without the consent of Congress, accept and retain any present, pension, office or emolument of any kind whatever, from any emperor, king, prince or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them. [*See Const. U. S. Art.* 1, *s.* ix. p. 13.]

THE

Constitution

OF THE

COMMONWEALTH OF PENNSYLVANIA.

WE, the People of the Commonwealth of Pennsylvania, ordain and establish this Constitution for its Government. [*See* 1 *Wheat.* 324. 4 *Wheat.* 403.]

ARTICLE I.

OF THE LEGISLATURE.

SECTION I. The legislative power of this commonwealth shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives.

SECT. II. The Representatives shall be chosen annually, by the citizens of the city of Philadelphia, and of each county respectively, on the second Tuesday of October.

SECT. III. No person shall be a Representative, who shall not have attained the age of

twenty-one years, and have been a citizen and inhabitant of the state three years next preceding his election, and the last year thereof an inhabitant of the city or county in which he shall be chosen; unless he shall have been absent on the public business of the United States, or of this state. No person, residing within any city, town, or borough, which shall be entitled to a separate representation, shall be elected a member for any county; nor shall any person, residing without the limits of any such city, town or borough, be elected a member therefor.

SECT. IV. Within three years after the first meeting of the General Assembly, and within every subsequent term of seven years, an enumeration of the taxable inhabitants shall be made, in such manner as shall be directed by law. The number of representatives shall, at the several periods of making such enumeration, be fixed by the legislature, and apportioned among the city of Philadelphia and the several counties, according to the number of taxable inhabitants in each; and shall never be less than sixty, nor greater than one hundred. Each county shall have at least one Representative; but no county,

hereafter erected, shall be entitled to a separate representation, until a sufficient number of taxable inhabitants shall be contained within it, to entitle them to one Representative, agreeably to the ratio which shall then be established.

SECT. V. The Senators shall be chosen for four years, by the citizens of Philadelphia, and of the several counties, at the same time, in the same manner, and at the same places, where they shall vote for Representatives.

SECT. VI. The number of Senators shall, at the several periods of making the enumeration before mentioned, be fixed by the legislature, and apportioned among the districts, formed as herein after directed, according to the number of taxable inhabitants in each; and shall never be less than one fourth, nor greater than one-third, of the number of Representatives.

SECT. VII. The Senators shall be chosen in districts, to be formed by the legislature, each district containing such a number of taxable inhabitants, as shall be entitled to elect not more than four Senators: When a district shall be composed of two or more counties, they shall be adjoining. Neither the city of

Philadelphia, nor any county shall be divided, in forming a district.

SECT. VIII. No person shall be a Senator, who shall not have attained the age of twenty-five years, and have been a citizen and inhabitant of the state four years next before his election, and the last year thereof, an inhabitant of the district for which he shall be chosen, unless he shall have been absent, on the public business of the United States or of this state.

SECT. IX. Immediately after the Senators shall be assembled, in consequence of the first election, subsequent to the first enumeration, they shall be divided, by lot, as equally as may be, into four classes. The seats of the Senators of the first class shall be vacated at the expiration of the first year, of the second class at the expiration of the second year, of the third class at the expiration of the third year, and of the fourth class at the expiration of the fourth year; so that one-fourth may be chosen every year.

SECT. X. The General Assembly shall meet on the first Tuesday of December in every year, unless sooner convened by the Governor.

SECT. XI. Each House shall choose its Speaker and other officers; and the Senate shall also choose a Speaker *pro tempore*, when the Speaker shall exercise the office of Governor.

SECT. XII. Each House shall judge of the qualifications of its members. Contested elections shall be determined by a committee, to be selected, formed and regulated in such manner as shall be directed by law. A majority of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized, by law, to compel the attendance of absent members, in such manner, and under such penalties, as may be provided.

SECT. XIII. Each House may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two thirds, expel a member, but not a second time for the same cause; and shall have all other powers necessary for a branch of the legislature of a free state.

SECT. XIV. Each House shall keep a journal of its proceedings, and publish them weekly, except such parts as may require secrecy: and the yeas and nays of the mem-

bers, on any question, shall, at the desire of any two of them, be entered on the journals.

SECT. XV. The doors of each House, and of committees of the whole, shall be open, unless when the business shall be such as ought to be kept secret.

SECT. XVI. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SECT. XVII. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the Commonwealth. They shall, in all cases, except treason, felony, and breach or surety of the peace, be privileged from arrest during their attendance at the session of the respective Houses, and in going to and returning from the same: And for any speech or debate in either House, they shall not be questioned in any other place.

SECT. XVIII. No Senator or Representative shall, during the time for which he shall have been elected, be appointed to any civil office under this Commonwealth, which shall have been created, or the emoluments of

which shall have been increased, during such time; and no member of Congress, or other person holding any office (except of attorney at law, and in the militia) under the United States, or this Commonwealth, shall be a member of either House during his continuance in Congress, or in office.

SECT. XIX. When vacancies happen in either House, the Speaker shall issue writs of election to fill such vacancies.

SECT. XX. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose amendments, as in other bills.

SECT. XXI. No money shall be drawn from the treasury, but in consequence of appropriations made by law.

SECT. XXII. Every bill which shall have passed both Houses, shall be presented to the Governor: If he approve, he shall sign it; but if he shall not approve, he shall return it, with his objections, to the House in which it shall have originated, who shall enter the objections at large upon their journals, and proceed to reconsider it: If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, with

the objections, to the other House, by which likewise it shall be re-considered; and if approved by two-thirds of that House, it shall be a law. But in such cases, the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered on the journals of each House respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, it shall be a law, in like manner as if he had signed it, unless the General Assembly, by their adjournment, prevent its return: in which case it shall be a law, unless sent back within three days after their next meeting.

Sect. XXIII. Every order, resolution or vote, to which the concurrence of both Houses may be necessary, (except on a question of adjournment,) shall be presented to the Governor, and, before it shall take effect, be approved by him, or being disapproved, shall be repassed by two-thirds of both Houses, according to the rules and limitations prescribed in case of a bill.

ARTICLE II.

OF THE GOVERNOR.

SECTION I. The Supreme Executive power of this Commonwealth shall be vested in a Governor.

SECT. II. The Governer shall be chosen on the second Tuesday of October, by the citizens of the Commonwealth, at the places where they shall respectively vote for Representatives. The returns of every election for Governor shall be sealed up, and transmitted to the seat of government, directed to the Speaker of the Senate, who shall open and publish them in the presence of the members of both Houses of the Legislature. The person having the highest number of votes shall be Governor, but if two or more shall be equal and highest in votes, one of them shall be chosen Governor by the joint vote of the members of both Houses. Contested elections shall be determined by a committee, to be selected from both Houses of the Legislature, and formed and regulated in such manner as shall be directed by law.

SECT. III. The Governor shall hold his of-

fice during three years from the third Tuesday of December next ensuing his election, and shall not be capable of holding it longer than nine, in any term of twelve years.

SECT. IV. He shall be, at least, thirty years of age, and have been a citizen and inhabitant of this state seven years next before his election; unless he shall have been absent on the public business of the United States, or of this state.

SECT. V. No member of Congress, or person holding any office under the United States, or this state, shall exercise the office of Governor.

SECT. VI. The Governor shall, at stated times, receive, for his services, a compensation, which shall be neither increased nor diminished during the period for which he shall have been elected.

SECT. VII. He shall be commander in chief of the army and navy of this commonwealth, and of the militia; except when they shall be called into the actual service of the United States.

SECT. VIII. He shall appoint all officers, whose offices are established by this constitution, or shall be established by law, and whose

appointments are not herein otherwise provided for; but no person shall be appointed to an office within any county, who shall not have been a citizen and inhabitant therein one year next before his appointment, if the county shall have been so long erected; but if it shall not have been so long erected, then within the limits of the county or counties out of which it shall have been taken. No member of Congress from this state, nor any person holding or exercising any office of trust or profit under the United States, shall, at the same time, hold or exercise the office of judge, secretary, treasurer, prothonotary, register of wills, recorder of deeds, sheriff, or any office in this state, to which a salary is by law annexed, or any other office which future legislatures shall declare incompatible with offices or appointments under the United States. [*See* 3 *S. and R.* 145, 155. 5 *S. and R.* 451.]

SECT. IX. He shall have power to remit fines and forfeitures, and grant reprieves and pardons, except in cases of impeachment.

SECT. X. He may require information, in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices.

SECT. XI. He shall from time to time, give to the General Assembly information of the state of the Commonwealth, and recommend to their consideration such measures as he shall judge expedient.

SECT. XII. He may, on extraordinary occasions, convene the General Assembly; and in case of disagreement between the two Houses, with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding four months.

SECT. XIII. He shall take care that the laws be faithfully executed.

SECT. XIV. In case of the death or resignation of the Governor, or of his removal from office, the Speaker of the Senate shall exercise the office of Governor, until another Governor shall be duly qualified. And if the trial of a contested election shall continue longer than until the third Tuesday in December next ensuing the election of a Governor, the Governor of the last year, or the Speaker of the Senate, who may be in the exercise of the executive authority, shall continue therein until the determination of such contested election, and until a Governor shall be qualified as aforesaid.

OF THE SECRETARY OF THE COMMONWEALTH.

SECT. XV. A Secretary shall be appointed and commissioned during the Governor's continuance in office, if he shall so long behave himself well: He shall keep a fair register of all the official acts and proceedings of the Governor, and shall, when required, lay the same, and all papers, minutes and vouchers, relative thereto, before either branch of the legislature, and shall perform such other duties as shall be enjoined him by law.

ARTICLE III.

OF ELECTIONS.

SECTION I. In elections by the citizens, every freeman of the age of twenty-one years, having resided in the state two years next before the election, and within that time paid a state or county tax, which shall have been assessed at least six months before the election, shall enjoy the rights of an elector: *Provided*, That the sons of persons qualified as aforesaid, between the ages of twenty-one and twenty-two years, shall be entitled to

vote, although they shall not have paid taxes.

SECT. II. All elections shall be by ballot, except those by persons in their representative capacities, who shall vote *viva voce*.

SECT. III. Electors shall, in all cases, except treason, felony, and breach or surety of the peace, be privileged from arrest during their attendance on elections, and in going to and returning from them.

ARTICLE IV.

OF IMPEACHMENTS.

SECT. I. The House of Representatives shall have the sole power of impeaching.

SECT. II. All impeachments shall be tried by the Senate: When sitting for that purpose, the Senators shall be upon oath or affirmation. No person shall be convicted without the concurrence of two-thirds of the members present.

SECT. III. The Governor, and all other civil officers, under this commonwealth, shall be liable to impeachment for any misdemeanor in office: But judgment, in such cases, shall not extend further than to removal from

office, and disqualification to hold any office of honor, trust, or profit, under this commonwealth: The party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment, and punishment, according to law.

ARTICLE V.

OF THE JUDICIARY.

SECT. I. The judicial power of this commonwealth shall be vested in a Supreme Court, in Courts of Oyer and Terminer and General Jail Delivery, in a Court of Common Pleas, Orphan's Court, Register's Court, and a Court of Quarter Sessions of the Peace, for each county, in Justices of the Peace, and in such other Courts as the legislature may, from time to time, establish.

SECT. II. The Judges of the Supreme Court, and of the several Courts of Common Pleas, shall hold their offices during good behaviour: But for any reasonable cause, which shall not be sufficient ground of impeachment, the Governor may remove any of them, on the address of two-thirds of each branch of the legislature. The Judges of the Supreme

Court, and the Presidents of the several Courts of Common Pleas shall, at stated times, receive, for their services, an adequate compensation, to be fixed by law, which shall not be diminished during their continuance in office; but they shall receive no fees or perquisites of office, nor hold any other office of profit under this commonwealth.

SECT. III. The jurisdiction of the Supreme Court shall extend over the state, and the judges thereof shall, by virtue of their offices, be Justices of Oyer and Terminer and General Jail Delivery in the several counties.

SECT. IV. Until it shall be otherwise directed by law, the several Courts of Common Pleas shall be established in the following manner. The Governor shall appoint, in each county, not fewer than three, nor more than four Judges, who, during their continuance in office, shall reside in such county: The state shall be divided by law into circuits, none of which shall include more than six, nor fewer than three, counties: A President shall be appointed of the courts in each circuit, who, during his continuance in office, shall reside therein: The President and judges, any two of whom shall be a quorum, shall

compose the respective Courts of Common Pleas.

SECT. V. The Judges of the Court of Common Pleas, in each county, shall, by virtue of their offices, be Justices of Oyer and Terminer and General Jail Delivery, for the trial of capital and other offenders therein: Any two of the said Judges, the President being one, shall be a quorum; but they shall not hold a Court of Oyer and Terminer or Jail Delivery in any county, when the Judges of the Supreme Court, or any of them, shall be sitting in the same county. The party accused, as well as the commonwealth, may, under such regulations as shall be prescribed by law, remove the indictment and proceedings, or a transcript thereof, into the Supreme Court.

SECT. VI. The Supreme Court and the several Courts of Common Pleas shall, besides the powers heretofore usually exercised by them, have the power of a Court of Chancery, so far as relates to the perpetuating of testimony, the obtaining of evidence from places not within the state, and the care of the persons and estates of those, who are *non compotes mentis*: And the legislature shall vest in the said courts, such other powers, to

grant relief in equity, as shall be found necessary; and may, from time to time, enlarge or diminish those powers, or vest them in such other courts, as they shall judge proper, for the due administration of justice. [*See* 4 *Binn.* 117.]

SECT. VII. The Judges of the Court of Common Pleas of each county, any two of whom shall be a quorum, shall compose the Court of Quarter Sessions of the Peace and Orphan's Court thereof; and the Register of Wills, together with the said Judges, or any two of them, shall compose the Register's Court of each county.

SECT. VIII. The Judges of the Courts of Common Pleas shall, within their respective counties, have the like powers with the Judges of the Supreme Court, to issue writs of *Certiorari* to the Justices of the Peace, and to cause their proceedings to be brought before them, and the like right and justice to be done.

SECT. IX. The President of the Courts, in each circuit, within such circuit, and the Judges of the Court of Common Pleas, within their respective counties, shall be Justi-

ces of the peace, so far as relates to the criminal matters.

SECT. X. The Governor shall appoint a competent number of Justices of the Peace, in such convenient districts, in each county, as are or shall be directed by law: they shall be commissioned during good behaviour; but may be removed on conviction of misbehaviour in office, or of any infamous crime, or on the address of both houses of the legislature. [*See* 4 *Yeates*, 399. 4 *S. and R.* 276.]

SECT. XI. A Register's office for the probate of wills and granting letters of administration, and an office for the recording of deeds, shall be kept in each county.

SECT. XII. The style of all process shall be, *The Commonwealth of Pennsylvania;* all prosecutions shall be carried on in the name and by the authority of the commonwealth of Pennsylvania, and conclude, *Against the peace and dignity of the same.*

ARTICLE VI.

OF SHERIFFS AND CORONERS.

SECTION I. Sheriffs and Coroners shall, at the times and places of election of Representa-

tives, be chosen by the citizens of each county; Two persons shall be chosen for each office, one of whom for each respectively shall be appointed by the Governor. They shall hold their offices for three years, if they shall so long behave themselves well, and until a successor be duly qualified; but no person shall be twice chosen or appointed Sheriff, in any term of six years. Vacancies, in either of the said offices, shall be filled by a new appointment, to be made by the Governor, to continue until the next general election, and until a successor shall be chosen and qualified as aforesaid.

OF THE MILITIA.

SECT. II. The freemen of this commonwealth shall be armed and disciplined for its defence. Those who conscientiously scruple to bear arms, shall not be compelled to do so; but shall pay an equivalent for personal service. The militia officers shall be appointed in such manner, and for such time, as shall be directed by law.

OF PUBLIC OFFICERS.

SECT. III. Prothonotaries, Clerks of the Peace and Orphans' Courts, Recorders of

deeds, Registers of wills, and Sheriffs, shall keep their offices in the county town of the county in which they respectively shall be officers, unless when the Governor shall, for special reasons, dispense therewith for any term, not exceeding five years after the county shall have been erected.

OF COMMISSIONS.

SECT. IV. All commissions shall be in the name, and by the authority, of the commonwealth of Pennsylvania, and be sealed with the state seal and signed by the Governor.

OF THE STATE TREASURER AND OTHER OFFICERS.

SECT. V. The State Treasurer shall be appointed, annually, by the joint vote of the members of both Houses. All other officers in the treasury department, attornies at law, election officers, officers relating to taxes, to the poor and highways, constables and other township officers, shall be appointed, in such manner as is or shall be directed by law.

ARTICLE VII.

OF PUBLIC SCHOOLS.

SECT. 1. The Legislature shall, as soon as conveniently may be, provide, by law, for the establishment of schools throughout the state, in such manner that the poor may be taught *gratis*.

OF SEMINARIES OF LEARNING.

SECT. II. The arts and sciences shall be promoted in one or more seminaries of learning.

OF RELIGIOUS SOCIETIES AND CORPORATE BODIES.

SECT. III. The rights, privileges, immunities and estates of religious societies and corporate bodies shall remain, as if the constitution of this state had not been altered or amended.

ARTICLE VIII.

OF THE OATH OF OFFICE.

Members of the General Assembly, and all officers, executive and judicial, shall be bound,

by oath or affirmation, to support the Constitution of this commonwealth, and to perform the duties of their respective offices with fidelity.

ARTICLE IX.

DECLARATION OF RIGHTS.

That the general, great, and essential principles of Liberty and free Government may be recognised and unalterably established,

We Declare, That,

SECTION I. All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness. [*See* 4 *Dall.* 258, 260.]

SECT. II. All power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety and happiness: For the advancement of those ends, they have, at all times, an unalienable and indefeasible right to alter,

reform or abolish their government, in such manner as they may think proper.

SECT. III. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences: no man can, of right, be compelled to attend, erect or support any place of worship or to maintain any ministry, against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience; and no preference shall ever be given, by law, to any religious establishments or modes of worship.

SECT. IV. No person who acknowledges the being of a God, and a future state of rewards and punishments, shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this commonwealth. [*See* 2 *Cowen*, 433, *n.* 572. *n.* 18 *Johns.* 98.]

SECT. V. Elections shall be free and equal.

SECT. VI. Trial by jury shall be as heretofore, and the right thereof remain inviolate. [*See* 1 *Binn.* 416. 8 *Wheat.* 674.

SECT. VII. The printing presses shall be free to every person who undertakes to examine the proceedings of the legislature, or any branch of government: And no law shall ever be made to restrain the right thereof.—The free communication of thoughts and opinions is one of the invaluable rights of man; and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty. In prosecutions for the publication of papers investigating the official conduct of officers, or men in a public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence: And, in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other cases. [*See* 3 *Yeates*, 520.]

SECT. VIII. The people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures:—And no warrant to search any place, or to seize any person or things, shall issue, without describing them as nearly as may be, nor without probable cause supported by oath or

affirmation. [*See* 6 *Binn.* 316. 3 *Cranch*, 448, 453.]

SECT. IX. In all criminal prosecutions, the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favour, and, in prosecutions by indictment or information, a speedy public trial, by an impartial jury of the vicinage: He cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty, or property, unless by the judgment of his peers, or the law of the land.

SECT. X. No person shall, for any indictable offence be proceeded against criminally by information, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, or, by leave of the court, for oppression and misdemeanor in office. No person shall, for the same offence, be twice put in jeopardy of life or limb; nor shall any man's property be taken or applied to public use, without the consent of his representatives, and without just compensation being made. [*See* 3 *Yeates*,

362. 6 *Binn.* 509. 20 *Johns.* 735. 2 *Dall.* 312. 18 *Johns.* 187. 2 *Johns. Ch. R.* 164. 1 *S. and R.* 382.]

SECT. XI. All courts shall be open, and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by the due course of law, and right and justice administered, without sale, denial or delay. Suits may be brought against the commonwealth in such manner, in such courts, and in such cases, as the legislature may by law direct.

SECT. XII. No power of suspending laws shall be exercised, unless by the legislature, or its authority.

SECT. XIII. Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

SECT. XIV. All prisoners shall be bailable by sufficient sureties, unless for capital offences, when the proof is evident or presumption great; and the privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

SECT. XV. No commission of oyer and terminer or jail delivery shall be issued.

SECT. XVI. The person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison, after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law.

SECT. XVII. No *ex post facto* law, nor any law impairing contracts shall be made. [*See* 3 *Dall.* 386, 396. 6 *Binn.* 271. 8 *Wheat.* 84, 92, 256, *n.* 5 *Wheat.* 420. 4 *Wheat.* 122, 209, 518. 6 *Wheat.* 131. 16 *Johns.* 232. 13 *Mass.* 16.]

SECT. XVIII. No person shall be attainted of treason or felony by the legislature.

SECT. XIX. No attainder shall work corruption of blood, nor, except during the life of the offender, forfeiture of estate to the commonwealth; the estates of such persons as shall destroy their own lives, shall descend or vest as in case of natural death; and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

SECT. XX. The citizens have a right, in a peaceable manner, to assemble together, for their common good, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by petition, address, or remonstrance.

SECT. XXI. The right of citizens to bear arms in defence of themselves and the state, shall not be questioned.

SECT. XXII. No standing army shall, in time of peace, be kept up without the consent of the legislature; and the military shall, in all cases, and at all times, be in strict subordination to the civil power.

SECT. XXIII. No soldier shall in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

SECT. XXIV. The legislature shall not grant any title of nobility or hereditary distinction, nor create any office, the appointment of which shall be for a longer term than during good behaviour.

SECT. XXV. Emigration from the state shall not be prohibited.

SECT. XXVI. To guard against transgressions of the high powers which have been delegated, *We declare*, That every thing in this article is excepted out of the general powers of government, and shall forever remain inviolate.

SCHEDULE.

That no inconvenience may arise from the alterations and amendments in the Constitution of this Commonwealth, and in order to carry the same into complete operation, it is hereby declared and ordained, That,

I. All laws of this commonwealth, in force at the time of making the said alterations and amendments in the said Constitution, and not inconsistent therewith, and all rights, actions, prosecutions, claims and contracts, as well of individuals as of bodies corporate, shall continue as if the said alterations and amendments had not been made.

II. The President and Supreme Executive Council shall continue to exercise the executive authority of this commonwealth, as heretofore, until the third Tuesday of December next; but no intermediate vacancies in the Council shall be supplied by new elections.

III. All officers in the appointment of the executive department shall continue in the exercise of the duties of their respective offices until the first day of September, one thousand seven hundred and ninety one, (unless their commissions shall sooner expire by

their own limitations, or the said offices become vacant by death or resignation,) and no longer, unless re-appointed and commissioned by the Governor; except that the judges of the Supreme Court shall hold their offices for the terms in their commissions respectively expressed.

IV. Justice shall be administered in the several counties of the state until the period aforesaid, by the same justices, in the same courts, and in the same manner, as heretofore.

V. No person now in commission, as Sheriff, shall be eligible at the next election for a longer term than will, with the time which he shall have served in the said office, complete the term of three years.

VI. Until the first enumeration shall be made, as directed in the fourth section of the first article of the Constitution established by this Convention, the city of Philadelphia and the several counties shall be respectively entitled to elect the same number of Representatives as is now prescribed by law.

VII. The first Senate shall consist of eighteen members, to be chosen in districts formed as follows, to wit: The city of Phila-

delphia, and the counties of Philadelphia and Delaware, shall be a district, and elect three Senators: The county of Chester shall be a district, and shall elect one Senator: The county of Bucks shall be a district, and shall elect one Senator: The county of Montgomery shall be a district, and shall elect one Senator: The county of Northampton shall be a district, and shall elect one Senator: The counties of Lancaster and York shall be a district, and shall elect three Senators: The counties of Berks and Dauphin shall be a district, and shall elect two Senators: The counties of Cumberland and Mifflin shall be a district, and shall elect one Senator: The counties of Northumberland, Luzerne and Huntingdon shall be a district, and shall elect one Senator: The counties of Bedford and Franklin shall be a district, and shall elect one Senator: The counties of Westmoreland and Allegheny shall be a district, and shall elect one Senator: And the counties of Washington and Fayette shall be a district, and shall elect two Senators: Which Senators shall serve until the first enumeration before mentioned shall be made, and the representation in both houses of the legislature shall be established by law, and chosen

as in the constitution is directed. Any vacancies which shall happen in the Senate, within the said time, shall be supplied as prescribed in the nineteenth section of the first article.

VIII. The elections of Senators shall be conducted, and the returns thereof made to the Senate, in the same manner as is prescribed by the election laws of the state, for conducting and making return of the election of Representatives. In those districts, which consist of more than one county, the judges of the district election within each county, after having formed a return of the whole election within that county, in such manner as is directed by law, shall send the same, by one or more of their number, to the place hereinafter mentioned within the district, of which such county is a part, where the judges so met shall compare and cast up the several county returns, and execute, under their hands and seals, one general and true return for the whole district, that is to say; the judges of the district composed of the city of Philadelphia and the counties of Philadelphia and Delaware, shall meet at the state-house in the city of Philadelphia; the judges of the district composed of the counties of Lancaster and

York shall meet at the court-house in the county of Lancaster; the judges of the district composed of the counties of Berks and Dauphin shall meet at Middletown, in the county of Berks; the judges of the district composed of the counties of Cumberland and Mifflin shall meet in Greenwood township, county of Cumberland, at the house now occupied by David Miller; the judges of the district composed of the counties of Northumberland, Luzerne and Huntingdon shall meet in the town of Sunbury; the judges of the district composed of the counties of Bedford and Franklin, shall meet at the house now occupied by John Dickey, in Air township, Bedford county; the judges of the district composed of the counties of Westmoreland and Allegheny shall meet in Westmoreland county, at the court-house in the town of Greensborough; and the judges of the district composed of the counties of Washington and Fayette, shall meet at the court-house in the town of Washington, in Washington county, on the third Tuesday in October, respectively, for the purposes aforesaid.

IX. The election of the Governor shall be conducted in the several counties in the man-

ner prescribed by the laws of the state for the election of Representatives; and the returns in each county shall be sealed by the judges of the elections, and transmitted to the President of the Supreme Executive Council, directed to the Speaker of the Senate, as soon after the election as may be.

Done in Convention, the second day of September, in the year of our Lord one thousand seven hundred and ninety, and of the Independence of the United States of America, the fifteenth. In testimony whereof, we have hereunto subscribed our names.

THOMAS MIFFLIN, *President*,

James Wilson,	Benjamin Pedan,
Hilary Baker,	Matthew Dill,
William Lewis,	William Irvine,
Thomas M'Kean,	James Power,
George Gray,	Joseph Hiester,
William Robinson, jr.	Christian Lower,
Robert Hare,	Abraham Lincoln,
Enoch Edwards,	Paul Groscop,
Samuel Ogden,	Balzer Gehr,
Thomas Jenks, jun.	Samuel Sitgreaves,
John Barclay,	John Arndt,
Abraham Stout,	Peter Rhoads,

William Gibbons,
Thomas Bull,
James Boyd,
Edward Hand,
Robert Coleman,
Sebastian Graff,
John Hubley,
John Brekbill,
Henry Miller,
Henry Slagle,
William Reed,
Benjamin Tyson,
James M'Lene,
George Matthews,
James Morris,
Lindsay Coats,
Jonathan Shoemaker,
John Gloninger,
William Brown,
Joseph Powell,
John Piper,
Charles Smith,
Simon Snyder,
William Findley,
William Todd,
Alexander Addison,
John Hoge,
David Reddick,
James Ross,
John Smilie,
Albert Gallatin,
Alexander Graydon,
Timothy Pickering,
Andrew Henderson,
John Gibson,
Thomas Beale,
John Sellers,
Nathaniel Newlin.

Attest,

JOSEPH REDMAN, *Secretary.*
J. SHALLUS, *Assistant Secretary.*

RULES

FOR THE GOVERNMENT

OF THE

HOUSE OF REPRESENTATIVES

OF PENNSYLVANIA.

Of the Duties of the Speaker.

1. He shall take the chair at the hour to which the house shall have adjourned, and immediately call the members to order, and on the appearance of a quorum, shall cause the journal of the preceding day to be read, which may then be corrected by the House.

2. He shall preserve order and decorum, and in debate shall prevent personal reflections, and confine members to the question under discussion. When two or more members rise at the same time, he shall name the one entitled to the floor.

3. He shall decide questions of order. An appeal from his decision may be made by two

members; or the Speaker may, in the first instance, submit the question to the House.—On questions of order there shall be no debate, except on an appeal from the decision of the Speaker, or on a reference of a question by him to the house, when no member shall speak more than once, unless by leave of the house; all decisions upon questions of order shall be noted by the clerk, and placed at the end of the journal of each session, with a reference to the decision as stated in the journal.

4. While the Speaker is putting a question or addressing the house, none shall walk out of or across the house, nor in such case, or when a member is speaking, shall entertain private discourse, nor while a member is speaking, shall pass between him and the chair.

5. The Speaker shall appoint the members of standing and select committees, unless otherwise ordered by the House.

6. Acts, addresses and joint resolutions shall be signed by the Speaker, and writs, warrants and subpœnas, issued by the House, shall be signed by him, and attested by the Clerk.

7. He shall have a general direction of the hall. He may name a member to perform the duties of the chair, but such substitution shall not extend beyond an adjournment.

Of the Order of Business.

8. After the reading of the journal, the order of business shall be as follows:

1st. Letters, petitions, memorials, remonstrances, and accompanying documents, may be presented and referred.

2. Original resolutions may be offered; items of unfinished business may be referred; leave of absence and leave to withdraw petitions and documents, may be asked; and motions to appoint additional members of committees may be made.

3. Reports of committees may be made:
1st, from standing committees.
2nd, from select committees.

4. Bills on a third reading.

5. Reports and resolutions may on motion be considered.

6. And motions to re-consider may be made.

7. Of bills.
1st, those in which the House has made progress on a second reading.

2nd, those reported by a committee of the whole.

3d, those in which the committee of the whole has made progress and has leave to sit again.

4th, bills not yet considered in committee of the whole, shall be taken up.

Of Business and Debate.

9. When a member is about to speak in debate, or to communicate any matter to the House, he shall rise and respectfully address himself to "Mr. Speaker," confining his remarks to the subject before the House, and avoiding personal reflections.

10. If any member in debate trangress the rules of the House, the Speaker shall, or any member may, through the Speaker, call him to order; the member so called to order, shall immediately sit down, unless permitted to explain; the house shall, if appealed to, decide on the case, but without debate; if there be no appeal, the decision of the Speaker shall be submitted to, and if the case require it, the member so called to order, shall be liable to the censure of the House.

11. No member shall speak more than

twice to the same question, without leave of the House.

Of Debate.

12. No member when speaking, shall be interrupted, except by a call to order by the Speaker, or by a member through the Speaker, or by a member to explain, or by a motion for the previous question; nor shall any member be referred to by name in debate, unless for a transgression of the rules of the House, and then by the Speaker only.

13. A member presenting a petition, or other paper to the chair, shall state only the general purport of it. The name of every member presenting a petition or other paper, or making a motion, shall be entered on the journal.

Of Motions.

14. All motions made and seconded shall be repeated by the Speaker, who shall put the question distinctly in the following form, viz.

"As many as are of opinion, (as the question may be) say *Aye.*"

And after the affirmative is expressed, "as many as are of the contrary opinion, say *No.*"

But the Speaker or any member may call for a division of the House, when the Speaker shall again put the question distinctly and in the following manner, viz.

As many as are in the affirmative will rise; and when he has announced the number in the affirmative, he shall put the opposite side of the question.

As many as are in the negative will rise.

15. If the Speaker or any two members require it, a motion made shall be written.

It may be withdrawn by the mover and seconder before amendment, or decision, and if withdrawn, the proceedings had thereon shall be expunged from the journal.

16. Any member may call for the division of a question, which shall be divided, if it comprehends questions so distinct, that one being taken away, the rest may stand entire for the decision of the house; a motion to strike out and insert shall be deemed indivisible. But a motion to strike out being lost, shall preclude neither amendment nor a motion to strike out or insert.

No motion can be received to postpone for the purpose of introducing a substitute.

Of Privileged Questions.

17. No business regularly before the House shall be interrupted except by a motion

For adjournment,

For the previous question, namely: "*shall the main question be now put?*"

For postponement,

For commitment,

Or for amendment.

18. A motion for adjournment shall always be in order, and shall be decided without debate, except that it cannot be received when the House is voting on another question, nor while a member is addressing the House.

A motion for the previous question shall preclude amendment and discussion of the original subject; but the previous question shall not be moved by less than twelve members rising for that purpose, and shall be decided without debate.

A motion for postponement shall preclude commitment. A motion for commitment shall preclude amendment or decision on the original subject.

19. No motion for reconsideration shall be permitted, unless made and seconded by members who were in the majority on the vote

on the original question, and within six days, exclusive of Sundays, after the decision.

20. When a blank is to be filled, the question shall be first taken on the largest sum, greatest number, and remotest day.

21. In all cases of elections, except for Speaker, there shall be a previous nomination of the candidates at least one day before the election, and a majority of the members present shall be necessary to a choice.

Every resolution, order, or vote, to which the concurrence of the Senate is necessary, and a motion to alter the rules of the House, or for information from the executive or departments, shall lie on the table one day.

No motion or proposition for a tax or charge on the people shall be discussed the day on which it is made or offered.

Of Committees.

22. Committees may be of three kinds, viz:

Committees of the whole house.

Standing committees.

Select committees.

Of Committee of the Whole.

23. The rules and proceedings observed in the House, shall be observed as far as they are practicable in committee of the whole,

except that a member may speak oftener than twice on the subject; nor can a motion for the previous question be made therein.

24. When the House resolves itself into a committee of the whole, the Speaker shall appoint a chairman, unless otherwise ordered by the House.

25. Amendments made in committee of the whole shall not be read by the Speaker on his resuming the chair, unless required by one or more of the members.

26. When in committee of the whole, any paper laid on the table of the House may be called for by a member, and read by the Clerk, unless the committee otherwise order.

27. No committee shall sit during the sitting of the House without leave.

28. The following standing committees shall be appointed at the commencement of each session, until otherwise ordered:

A committee of ways and means.
A committee on the judiciary system.
A committee on claims.
A committee on agriculture.
A committee on education.
A committee on domestic manufactures.
A committee of accounts.
A committee on vice and immorality.

A committee on the militia system.

A committee on election districts.

A committee on banks.

A committee on estates and escheats.

A committee on bridges and state and turnpike roads.

A committee on corporations.

A committee on local appropriations.

Which several committees shall each consist of seven members.

A committee on bills, to consist of three members.

A committee on the library, to consist of three members.

A committee on inland navigation and internal improvement, to consist of thirteen members.

Of Bills.

29. All bills shall be introduced, upon the reports of committees: standing committees may report by bill: select committees may report by bill, on leave of the House. Members asking leave to bring in a bill, shall give one day's notice, stating the object of the bill, and upon leave granted, a committee shall be appointed to prepare and bring in a bill accordingly.

30. Every bill shall receive three several readings in the House, the two last of which shall be at length, previously to its passage, but no bill shall be read twice in the same day; and all bills and joint resolutions, after the first reading, shall be printed for the use of the members, unless otherwise ordered by the House, and shall be read in committee of the whole: public bills shall be made the order of a particular day, and shall, when called for, have the preference of private bills, which shall be taken up according to their seniority, reckoning from the date of their introduction into the House, and when any bill shall be presented from the Senate for concurrence, the Speaker shall determine, or the House may order upon the printing the same, and direct accordingly.

31. Communications from the Senate to the House shall be read, and information shall be given to the Senate whenever any proposition coming from that body shall be concurred in.

32. When the names of the members shall be called, it shall be done in alphabetical order, except Mr. Speaker, who shall be called last.

33. The yeas and nays of the members on any question, shall, at the desire of any two

of them, be entered on the journals; and the members shall have a right to insert the reasons of their votes on the journals.

34. No member shall absent himself without first obtaining leave of the house.

35. No member shall be permitted to vote on any question, unless he be within the bar, and when the yeas and nays are called, he be present to answer to his name.

36. On the call of the yeas and nays, the clerk shall read the names of the members after they have been called, and no member shall be permitted to change his vote unless he at that time declares that he voted under a mistake of the question.

37. On the call of a member for a bill or other subject, on the table of the House, the question shall be decided without debate.

Of Persons Privileged.

38. None but members of the Senate, their officers, the Governor and heads of department, judges of the courts of this commonwealth, and former members of the Legislature, shall be permitted to come within the bar of the House during its session, unless specially introduced by a member. And no person, not a member of the Legislature,

shall be allowed to come upon the floor of the House, or sit in any seats appropriated for members, or interrupt a member by speaking to him in his seat while the House is in session, and it shall be the duty of the doorkeeper to give notice to any person offending against this rule.

Of Rules.

39. No rule shall be altered or dispensed with, but by two thirds of the members present.

40. The rules now adopted, shall be the rules of the House of Representatives of this commonwealth until otherwise ordered, and shall be published in pamphlet form, and delivered by the Clerk to the members of each succeeding Legislature within the first week of the session.

Decisions of the House upon Questions of Order.

After information has been given to the Senate that the House insists upon its non-concurrence in an amendment by the Senate, a motion to recede from the non-concurrence is not in order.* *Jour. H.R. Ses.* 1827-8, *p.* 781.

The same principle is decided in Journal, 1816–17, page 708.

* In this case a Committee of Conference had been appointed, and reported they could not agree.

LEGISLATIVE MANUAL

OF

PENNSYLVANIA.

OF THE LEGISLATURE.

Constitution, Article 1, *Section* 1.

"THE legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives."

Of the Census and Ratio of Representation.

SECT. IV. Within three years after the first meeting of the General Assembly, and within every subsequent term of seven years, an enumeration of the taxable inhabitants shall be made, in such manner as shall be directed by law. The number of representatives shall, at the several periods of making such enumeration, be fixed by the legislature, and apportioned among the city of Philadelphia and the several counties, according to the number of taxable inhabitants in each; and shall never be less than *sixty*, nor greater

than *one hundred.* Each county shall have at least one Representative; but no county, *hereafter* erected, shall be entitled to a separate representation, until a sufficient number of taxable inhabitants shall be contained within it, to entitle them to one representative, agreeably to the *ratio* which shall then be established.

Taxable Inhabitants.

In obedience to the foregoing section of the constitution, the act of the 6th of January, 1821, [*Purdon, page* 151.] was passed, entitled "An Act to provide for the enumeration of the taxable inhabitants within this Commonwealth," which directs the commissioners of the several counties of this commonwealth, every *seven* years after the passage of the act, to issue their precepts to the respective township, ward, or district assessors, requiring them, within thirty days after the date of such precept, to make out two complete lists in alphabetical order, containing a just and true account of the names, surnames and occupations of every taxable person of the age of twenty-one years and upwards, whether male or female, resident

within their respective township, ward, or district.

The commissioners, on receiving the returns of their respective assessors, are required carefully to examine said lists, comparing them with former duplicate lists of the respective townships, wards, or districts, or any other means by which they may ascertain their correctness, and on the discovery of any error or omission, they are required to certify the nature and extent of the same, with the probable cause thereof, under their hands and seals of office, and on or before the first Tuesday in December next ensuing, transmit to the governor, under their respective hands and seals of office, duplicates of the several returns received by them as aforesaid, with the said certificates, which returns and certificates the governor shall lay before the General Assembly then in session.

Pursuant to this act, the following is the list of taxable inhabitants, as returned by the county commissioners, at the last apportionment in the year 1828.

Counties.	*Taxables.*	*Counties.*	*Taxables.*
Adams,	4192	Luzerne,	4482
Allegheny,	10236	Lycoming,	3081
Armstrong,	3257	M'Kean,	307
Beaver,	4208	Montgomery,	8242
Bedford,	4442	Mifflin,	4199
Bradford,	3365	Mercer,	3490
Berks	10202	Northampton,	7382
Bucks,	9076	Northumberland,	3581
Butler,	2810	Philadelphia City,	16542
Chester,	10231	Philadelphia County,	20739
Cumberland,	5342	Pike,	892
Columbia,	3521	Perry,	2980
Centre,	3618	Potter,	246
Clearfield,	892	Somerset,	3340
Crawford,	3034	Susquehanna,	2594
Cambria,	1144	Schuylkill,	2715
Delaware,	3633	Tioga,	1635
Dauphin,	4602	Union,	3772
Erie,	2867	Venango,	1930
Franklin,	6095	Warren,	920
Fayette,	5897	Washington,	8134
Greene,	3141	Westmoreland,	6516
Huntingdon,	5009	Wayne,	1381
Indiana,	2732	York,	8526
Jefferson,	356		
Lancaster,	14991		254428
Lebanon,	3563	Deaf and Dumb,	468
Lehigh,	4321	Slaves,	76

Of the Ratio of Representation in the Senate.

ART. I. Sect. 6. The number of Senators shall, at the several periods of making the enumeration before mentioned, be fixed by the legislature, and apportioned among the districts, formed as herein after directed, according to the number of taxable inhabitants in each; and shall never be less than one fourth,

nor greater than *one third, of the number of Representatives.*

Of Districts for Electing Senators.

SECT. VII. The Senators shall be chosen in districts, to be formed by the legislature, each district containing such a number of taxable inhabitants, as shall be entitled to elect not more than four Senators: When a district shall be composed of two or more counties, they shall be adjoining. Neither the city of Philadelphia, nor any county, shall be divided, in forming a district.

Of the Qualifications of Senators.

SECT. VIII. No person shall be a Senator, who shall not have attained the age of twenty-five years, and have been a citizen and inhabitant of the state four years next before his election, and the last year thereof, an inhabitant of the district for which he shall be chosen, unless he shall have been absent on the public business of the United States, or of this state.

Of Classing the Senators.

SECT. IX. Immediately after the Senators shall be assembled, in consequence of the first election, subsequent to the first enumeration, they shall be divided, by lot, as equally as may be, into four classes. The seats of the Senators of the first class shall be vacated at the expiration of the first year, of the second class at the expiration of the second year, of the third class at the expiration of the third year, and of the fourth class at the expiration of the fourth year; so that one fourth may be chosen every year.

Number of Senators, Names, and Districts.

In compliance with the directions of the 6th section of the 1st article of the constitution it has been enacted, That until the next enumeration of taxable inhabitants and apportionment therein, the Senate shall consist of *thirty-three Senators*, and be apportioned in districts as follows:

Present Members.

District No. 1. *City of Philadelphia*—William Boyd, David S. Hassinger.

2. *County of Philadelphia*—Jesse R. Burden, Joseph Taylor.

3. *Montgomery*—Benjamin Reiff.

4. *Delaware and Chester*—John Kerlin, William Jackson.

5. *Bucks*—Matthias Morris.

6. *Berks and Schuylkill*—Daniel A. Bertolet, Jacob Krebs.

7. *Lancaster*—Samuel Houston, John Robinson.

8. *Dauphin and Lebanon*—Jacob Stœver.

9. *Northumberland and Union*—Samuel J. Packer.

10. *Luzerne and Columbia*—Jacob Drumheller.

11. *Bradford, Susquehanna and Tioga*—Reuben Wilber.

12. *Northampton, Lehigh, Pike and Wayne*—Henry King, William G. Scott.

13. *Lycoming, Centre, Clearfield, M'Kean and Potter*—Joseph B. Anthony.

14. *York and Adams*—Henry Logan, Ezra Blythe.

15. *Franklin*—David Fullerton.

16. *Cumberland and Perry*—Jesse Miller.

17. *Huntingdon, Mifflin and Cambria*—Thomas Jackson.

18. *Westmoreland*—Jacob M. Wise.

19. *Fayette and Greene*—William G. Hawkins, Solomon G. Krepps.

20. *Washington*—Thomas Ringland.

21. *Allegheny*—John Brown.

22. *Somerset and Bedford*—William Piper.

23. *Erie, Crawford and Mercer*—Thomas S. Cunningham.

24. *Venango, Warren, Armstrong, Indiana and Jefferson*—Philip Mechling.

25. *Beaver and Butler*—Moses Sullivan.

Term of Service of Senators.

The Senators shall be chosen for *four years* by the citizens of Philadelphia and of the several counties, at the same time and place where they vote for Representatives.

Of the Election of Representatives.

SECT. II. The Representatives shall be chosen annually by the citizens of Philadelphia, and of each county respectively on the *second Tuesday of October.*

Of the Qualifications of Representatives.

SECT. III. No person shall be a Representative, who shall not have attained the age of twenty-one years, and have been a citizen and inhabitant of the state three years next

preceding his election, and the last year thereof an inhabitant of the city or county in which he shall be chosen; unless he shall have been absent on the public business of the United States, or of this state. No person, residing within any city, town, or borough, which shall be entitled to a separate representation, shall be elected a member for any county; nor shall any person, residing without the limits of any such city, town or borough, be elected a member therefor.

In obedience to the 4th section of the first article of the constitution, it has been enacted, That until the next enumeration of taxables and apportionment thereon made, the House of Representatives, at a ratio of *two thousand five hundred and forty-four*, shall consist of *one hundred members*, and are as follows, viz:

Present Members.

Philadelphia City.—Charles H. Kerk, C. J. Ingersoll, Anthony Lausatt, Thomas M. Pettit, Charles Brown, Samuel B. Davis, Henry Simpson.

Philadelphia County—John Carter, Daniel K. Miller, Thomas J. Heston, James Good-

man, William Wagner, Franklin Vansant, John Felton, Richard Peltz.

Bucks—Benjamin Reigle, John Yardley, Albert Smith, John Keller.

Chester—Thomas Ashbridge, Arthur Andrews, Nathan Pennypacker, Benj. Griffith.

Lancaster—Benjamin Linville, Samuel Hathorn, John Long, Daniel Hamacher, Samuel Landis, Samuel Parke.

York—George Fisher, Andrew M'Conkey, John Rankin.

Cumberland—William Alexander, Peter Lobach.

Perry—James Black.

Berks—Paul Geiger, John Wanner, John Stauffer, John Potteiger.

Schuylkill—Samuel Huntzinger.

Northampton, Wayne and Pike—David D. Wagener, Samuel Stokes, M. Robert Butz, Thomas Fuller.

Lehigh—Peter Knepley, Chris. Pretz.

Northumberland—Henry Frick.

Union—Philip Rhule, Ner Middleswarth.

Columbia—Uzal Hopkins.

Washington—William Waugh, William Patterson, Wallace M'Williams.

Westmoreland—John Kuhns, Samuel Hill, John C. Plumer.

Armstrong—Hugh Reed.

Indiana and Jefferson—William Houston.

Fayette—Joseph Eneix, E. P. Oliphant.

Bedford—Nathaniel P. Fetterman, G. R. H. Davis.

Franklin—Frederick Smith, John Cox.

Montgomery—Adam Slemmer, John Shearer, Philip Hoover.

Dauphin—Christian Spayd, William Rutherford.

Lebanon—William Reilly.

Luzerne—George Denison, Benjamin Dorrance.

Susquehanna—Almon H. Reed.

Bradford and Tioga—John Laporte, John Beecher.

Huntingdon—John Blair, John Williamson.

Beaver—John R. Shannon, Samuel Power.

Allegheny—James S. Craft, John Arthurs, William Kerr, William Hayes.

Butler—William Purviance.

Mifflin—John Cummin, Ephraim Banks.

Delaware—John Lindsay.

Somerset and Cambria—John Gebhart, Peter Livergood.

Lycoming, Potter, and M'Kean—Solomon Bastress, William Piatt.

Greene—Barnet Whitlach.

Adams—James M'Sherry, Andrew Marshal.

Centre and Clearfield—Henry Petriken, Bond Valentine.

Crawford—Stephen Barlow.

Venango and Warren—John Galbraith.

Mercer—Walter Oliver.

Thirty-three, the present number of Senators, and one hundred, the present number of Representatives, cannot be increased under the present Constitution. The number might however be *reduced* to *fifteen* Senators, and *sixty* Representatives; but the increasing population, the various new objects of legislation, and a general anxiety on the part of the people to be represented, in a body in which so many of their rights are decided upon, will doubtless prevent the present number of Representatives in both branches from being reduced.

Election of Representatives.

SECT. II. The Representatives shall be chosen annually by the citizens of the city of

Philadelphia, and of each county respectively, on the second Tuesday of October.

SECT. V. The Senators shall be chosen for four years by the citizens of Philadelphia and of the several counties, at the *same time* and in the same manner, and at *the same places where they shall vote for Representatives.*

Of the Returns of Elections.

Act of the 15th of February 1799. Purdon, 214.

SECT. XII. As soon as all the votes shall be read off and counted, the judges of each district, in case the county be divided into districts, shall make out, under their hands, a fair statement and certificate of the number of votes, which shall have been given for each candidate, distinguishing the station or office he was voted for, which number shall be expressed in words at length, and not in figures only: and one of the said judges shall take charge of such certificate and produce the same in a meeting of one judge from each district within the same county, at the court-house, and for the city and county of Philadelphia at the State House; and the judges

of the several districts of the county so met shall add together the number of votes which shall appear to be given for any person or persons, who shall thereunto be found to be highest in vote or elected as Representatives or Senators, and shall forthwith make out duplicate returns of the election of such person or persons as shall be so elected and chosen Representatives or Senators, and when a Governor is to be chosen, like returns of all the votes given for any person or persons for Governor; and having lodged one of each of the said returns in the office of the Prothonotary of the county, shall enclose, seal and direct the others, when the same relates to the choice of Governor, to the Speaker of the Senate; when to the election of a Senator or Senators, to the Senate; when to a member or members of the House of Representatives, to the House of Representatives. And one of the said judges shall deliver the returns, so sealed and directed to the sheriff, endorsing thereon the time of delivering the same; and having received the returns of any district for the election of a Senator or Senators, or one or more members of the House of Representatives, which may by law, be directed to be completed and made

out within the said county for the same election, the sheriff shall forthwith, by himself or his deputy, transmit the whole of the said returns to the secretary of the commonwealth, so that the same shall be delivered into the secretary's office within twenty days after the last of the returns shall have been received by said sheriff.

SECT. XIII. In the city of Philadelphia and in any county, where the election shall be holden only at one place, the returns thereof shall be made without delay in like manner as herein directed, as nearly as the different circumstances shall permit; and when two or more counties shall compose a district for the choice of one or more members of the Senate or House of Representatives, the judges of the election in each county having met as aforesaid at their court-house, shall make out a fair statement under their hands, of all the votes which shall have been given at the said election within their county for any person or persons, as a member or members of the Senate or House of Representatives, as the case may be, and one of the said judges shall take charge of such certificate, and produce the same in a meeting of one judge from each county, at

such place in the said district as is or shall be appointed by law for that purpose, on the seventh day after the election, and the said judges shall there cast up the several county returns, and make duplicate returns of the person or persons chosen for the said district, and one of each returns, if there shall be more than of one kind, shall be deposited in the Prothonotary's office of the county in which they meet, and the other delivered to the sheriff of the said county, sealed and directed as herein before prescribed, and the day on which the same is so delivered shall also be endorsed thereon. And each Prothonotary within this commonwealth, shall make out a copy thereof and certify the same, and shall forthwith transmit said copy under a sealed cover, directed to the Secretary of the commonwealth by placing the same in the nearest Post Office: The Legislature having thus provided for the transmission of the returns to the Secretary of the commonwealth, he hands them over to the clerks of the two Houses respectively, on the first Tuesday in December.

SECT. XVI. The judges of the elections, who shall meet at their respective court-

houses, or other place appointed by law, to compare the several lists and certificates, and to cast up the number of votes for each candidate, shall give notice in writing to each member of the House of Representatives and Senate, who shall be elected, and reside in their respective districts, within ten days next after the day of making up the return. [*Purdon* 217.]

Meeting of the General Assembly.

ART. 1. SECT. X. The General Assembly shall meet on the first Tuesday of December in every year, unless sooner convened by the Governor.

Privileges.

Members are in all cases, except treason, felony and breach or surety of the peace, privileged from arrest during their attendance at the session of the respective Houses, *and* in *going to*, and *returning from* the same.

A Member of Assembly is privileged from arrest, summons, citation, or other civil process, during his attendance on the public business confided to him: and it seems his suits cannot be forced on to trial during the

session of the Legislature. *Geyer's Les.* vs. *Irwin*, 4 *Dall.* 107.

So a member of a State Convention is privileged from a *summons* or arrest, during the sitting of the Convention, and for a reasonable period *before* and *after* the *Session*. *Bolton* vs. *Martin*, 1 *Dall.* 296.

The claim of privilege must be made at a *proper time*. Therefore, if the attorney of a member of assembly, confess judgment, when the cause comes on for trial, *without claiming privilege*, the party will not afterwards be relieved. *Geyer's Les.* vs *Irwin*, 4 *Dall.* 107.

Freedom of Debate.

The 23d article of the declaration of rights in the constitution of Massachusetts, declares, that—"The freedom of deliberation, speech and debate in either House of the Legislature is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action or complaint in any other court or place whatsoever." In an action for slander, brought against a member of the Legislature, who plead his privilege, the following points were

ruled by the Supreme Court of Massachusetts:

1. That the court was competent to decide on a plea of privilege, pleaded by a member of the House of Representatives in bar to an action for slander. *Coffin* vs. *Coffin, Mas. Rep. vol.* 4.

2. The freedom of deliberation, speech and debate, secured by the declaration of rights to each House of the Legislature is rather the privilege of the individual members, than of the House as an organized body; being derived from the *will of the people*, the members are entitled to it, even *against* the will of the House. *Ibid.*

3. The article, securing this freedom, ought to be construed *liberally*, that its full design may be answered: and it extends to every act resulting from the nature of the member's office, and done in the due execution of it; and exempts him from prosecution for every thing said or done by him as a Representative, whether according to the rules of the House or not.

4. So if he be out of the chamber, sitting in committee, or in a convention of the two Houses out of the Representative Chamber.

5. A Representative is not answerable in a prosecution for defamation, if the words charged were uttered in the execution of his official duty, although spoken maliciously, nor, if not uttered in the execution of his official duty, and not spoken maliciously or with intent to defame.

Opening of the Session.

The members of both branches of the Legislature, or at least a majority, a number sufficient to constitute a quorum, arrive by the first Tuesday of December. It is customary to open the session in the *afternoon* of that day, usually about 3 o'clock. Those members who arrive first at the seat of government, select such seats as they are best pleased with. And this right is so well settled, that no one pretends to question it. No person is allowed to take a seat by proxy, unless it be a member from a county, who can take seats for the whole delegation of his county. This is done by taking possession of the keys of the respective desks selected. In the Senate, where the body is so small, where the members are elected for four years, where only one fourth vacate their seats annually, and where a portion of that fourth is not un-

frequently re-elected, little or no difficulty occurs in obtaining seats. The Rule however is, that new members can take, if they arrive at Harrisburg sufficiently soon, any of the seats vacated by the fourth whose time expires, although some of them may be re-elected, and would like to retain their old location in the Senate. But as the members of a small body are always courteous to each other, no misunderstanding is likely to take place among the Senators, particularly as they have to remain together for four years, they avoid every thing that would cause unpleasant feelings, or engender personal dislikes.

In the House of Representatives, in the bustle of one hundred members, these matters are not so nicely weighed. Every man is exceedingly diligent in getting what he considers the best seat in the house.

The individuals elected, having taken their seats, and the secretary of the commonwealth having handed the returns to the clerk, who is seated in front of the Speaker's chair, some one of the old members rises, and remarks: "As this is the day assigned by the constitution, for the meeting of the General Assem-

bly, I move, that the clerk open and read the returns of the members elected from the city of Philadelphia, and the several counties of this commonwealth." This motion being seconded, the clerk states the motion, and asks, "Will the House agree to the motion?" —which being decided in the affirmative, the clerk says: "It is agreed to;" and then opens and reads the returns, commencing with the city of Philadelphia. Having gone through, he calls over the names of the members present, in alphabetical order—He then announces the number present: some one of the Representatives then moves, that the members proceed to the choice of a Speaker. This is done in pursuance of the XI. section, first article, which declares each House shall choose its Speaker. As soon as this motion is seconded, the clerk rises, and after stating the motion, asks: "Will the members present proceed to the choice of a Speaker?" Which being agreed to, he calls over the names of the members, who, in voting, pronounce aloud the *name* of the person they wish elected Speaker, pursuant to the 2nd section of the 3d article of the constitution, which declares, that "all elections shall be

by ballot, except those by persons in their *Representative capacities*, who *shall* vote *viva voce.*"

It requires a majority of all the votes of the members present in favour of *any* candidate to elect him. Should there not, therefore, be a majority of votes for one candidate, a second, third, and fourth vote, and so on, will be taken until a choice is made.

In the Senate, in the year 1814, a number of votings took place between two candidates, viz. Isaac Weaver and P. C. Lane : neither of the candidates could obtain a majority of the whole number present: and as both the candidates had given their votes to the Hon. John Tod, who had formerly been Speaker of the House of Representatives, the Senators finally turned their attention to that gentleman, and elected him on the *third* day of the session. The clerk having taken down the votes for Speaker, and having counted them, announces that "Mr. —— having —— votes, being a majority of the votes of the gentlemen present, is elected Speaker." This gentleman then takes the chair, and makes the necessary acknowledgment for

the honour conferred on him. He now asks the House to name a member to administer to him the requisite qualifications. This is invariably declined; and he is requested to name a member himself. He then calls some experienced member, who standing in front of the speaker's desk, administers the oath of office in the following form:

"You do swear, that you will support the Constitution of the United States; so help you God."

"You do also swear, that you will support the Constitution of the State of Pennsylvania, and that you will discharge your duty as Speaker and member of the House of Representatives, with fidelity; so help you God."

If the Speaker swear by the uplifted hand—"You do swear by Almighty God, the searcher of all hearts, that you will support the constitution of the United States, and that as you shall answer to God at the great day."

"You do also swear by Almighty God, the searcher of all hearts, that you will perform your duty as speaker and member of the House of Representatives with fidelity, and that, as you shall answer to God at the great day."

If he affirm: "You most solemnly, sincerely and truly declare and affirm, that you will support the Constitution of the United States."

"You also most solemnly, sincerely, and truly declare and affirm, that you will support the Constitution of the State, and discharge your duty as Speaker and Member of the House of Representatives with fidelity."

The Speaker, having been duly qualified, signs his name to a copy of the oath or affirmation he has just taken, in a book kept for that purpose. He then requests the members to step forward, in front of the Speaker's desk, as their names are called in alphabetical order, and take their qualification of office, and sign the same. "Those who swear by the book will please to step forward first."

Those who swear by the uplifted hand are afterwards called upon. Those who affirm are called last. This order depends upon the pleasure of the Speaker, who may vary it, if he thinks proper.

The House being thus organized, a motion is made in the following words, by a member rising from his seat and standing up in his place: "Mr. Speaker, I move that a committee be appointed to inform the Senate,

that the House of Representatives is organized and ready to proceed to business." The motion being seconded, the Speaker states it, and rising from the chair, puts it as follows: "As many as are in favour of the motion will say Aye." Having paused a moment, he reverses it by saying—"'As many as are against it will say No." As this motion uniformly carries, the Speaker sometimes puts the question thus:—"Will the House agree to the motion?" which being determined in the affirmative, he announces that "it is agreed to." He then asks, "Of what number shall the committee consist?" The answer is "Two." The Speaker then observes, "two has been named: no other number having been named, the committee will consist of two." The Speaker *then* names the committee—"the committee are Messrs. A. B. and C. D." In making up this committee, the gentleman offering the motion is always first named upon it. The two gentlemen thus appointed, immediately repair to the bar of the Senate chamber, where they find the sergeant-at-arms of that body; who being notified that they are a committee from the other House, rises and addresses the Speaker of the Senate, as fol-

lows: "A committee from the House of Representatives." The Speaker of the Senate rises from his seat, as soon as the sergeant-at-arms announces the committee, and addresses the Senate in the same language: "A committee from the House of Representatives." The committee now step some three or four paces within the bar of the Senate, and the first named member addresses the Speaker, who continues standing during the ceremony, as follows: "Mr. Speaker, we have been appointed a committee by the House of Representatives to inform the Senate, that the House of Representatives is organized, and ready to proceed to business." The committee then withdraw, and the Speaker resumes his seat. The committee return to the house, and take their seats. The chairman, if he discovers that there is no business before the house, rising in his place, makes report as follows: "Mr. Speaker, the committee appointed to inform the Senate, that the House of Representatives is organized, and ready to proceed to business, Report, that they have discharged that duty." The Speaker repeats their report.

A similar committee is appointed by the

Senate, who wait upon the House, are received in the same manner, and make report to the Senate. It is proper here to adopt the following motion: Resolved, That a committee be appointed to prepare and report a system of rules and regulations for the government of the House, and until such report is made and approved, that the Rules of the last House be adopted. This is done in obedience to the 13th section of the first article of the constitution, which vests each House with power to determine upon its own rules of proceeding.

The following resolution is usually presented on the same afternoon, by a member rising and announcing as follows: "Mr. Speaker. I offer the following resolution." He then reads it: Resolved, that the members of this House, the clerks, sergeant-at-arms, and door keeper, each be furnished, during the present session, with two daily newspapers, or as many papers as shall be equivalent thereto in price, and that the expenses thereof be paid out of the contingent fund." As soon as the member shall have read his resolution, he walks up in front of the Speaker, and politely hands it to him: who says—"the following

resolution has been moved and seconded," and hands it to the clerk who reads it aloud. As soon as he has gone through the reading of it, the Speaker asks, "What order will the house take upon this resolution?" The mover, if he is anxious to dispose of it *immediately*, says, "I move the house proceed to the second reading and consideration of the resolution." Some member seconds the motion; the Speaker rises and states it, and puts the question—"As many as are in favour of proceeding will say Aye." "The contrary opinion will say No." "The ayes have it, it is agreed to." The Speaker says, "The resolution will be again read." The clerk reads the resolution. The Speaker then says: "The resolution is before the house," and after a momentary delay, if no objections are made, asks, "Is the house ready for the question?" and being answered in the affirmative, he rises and puts the question as follows: "As many as are in favour of the *passage* of the resolution will say Aye." "The contrary opinion will say No." If the Speaker from the sound of the voices, *thinks* the ayes have it, he will say, "The ayes *appear* to have it." If no one question his judgment, he then says, "the ayes *have*

it." If, however, any one doubts, he calls for a *division*, when the Speaker states, "A division is called for;" and rising says, "As many as are in favour of the resolution, will show their *assent* by *rising*." The Speaker then counts the persons standing up, and usually commences on his right: and having ascertained the number, he says, "forty-five ayes," supposing that number to have been up. The Speaker then says, "The gentlemen will please take their seats." He then says, "As many as are opposed to the passage of the resolution will show their *dissent* by *rising*." He counts those in the negative in the same way, and says, "forty-two noes," or any other number as the case may be. If at this time, *before* the decision has been pronounced by the Speaker, the *yeas* and *nays* should be required by any two members, in pursuance of the 1st art. of the constitution, sec. 14, the Speaker takes his seat, and directs the clerks to call over the names of the members. Having performed this duty, the two clerks *compare* their tallies, and hand the vote to the Speaker, who rises and says: "The clerks report, that they agree in their tallies, and that on agreeing to the *passage*

of the said resolution, the yeas are 45, nays 44." "The Resolution is therefore agreed to."

I have thus gone through, step by step, the questions that usually occur in the adoption of a *resolution*.

It is then the practice to "move, that when the House adjourns, it adjourns till to-morrow morning at 10 o'clock, and that that be the standing hour of meeting until otherwise ordered;" which being agreed to, on motion the House adjourns. In the case of a *motion*, it will be perceived, that the question is taken upon the proposition at once. It does not go through a *second* reading, as in the case of a resolution.

Of the Duties of the Speaker.

Rule 1. He shall take the chair at the hour to which the House shall have adjourned, and immediately call the members to order, and on the appearance of a quorum, shall cause the journal of the preceding day to be read, which may then be corrected by the House.

The Speaker of each House having resumed his chair, at the hour to which their respective Houses stood adjourned, says,

"The House will come to order." The members take their seats; he then casts his eye round the chamber to ascertain whether there is a quorum of members present; and having satisfied himself of the presence of a quorum, he announces, "There is a quorum of members present—The Clerk will read the journal of yesterday." The Clerk rises, and reads the proceedings of the former day.

As soon as the journal has been read by the Clerk, it is in order to correct any errors, or supply any omissions that may appear upon the proceedings. Errors seldom, if ever occur, as the Clerks are gentlemen admirably qualified for their stations.

An intelligent and industrious Clerk cannot be too highly prized by a legislative body. He expedites the proceedings of the Assembly. saves members immense trouble, is of great service to a newly elected Speaker, and by a quickness of apprehension, in taking down amendments, or moulding suggestions made by members into a proper shape to be introduced as alterations into bills, which are under discussion, greatly economizes the time of the House.

Rule 2. He shall preserve order and decorum, and in debate shall prevent personal reflections, and confine members to the question under discussion. When two or more members rise at the same time, he shall name the one entitled to the floor.

It is always in the power of the Speaker to prevent, to a very great extent, personal reflections, by promptly, yet in a decorous manner, informing a member, that he is out of order, and that such remarks cannot be tolerated. The great error consists in allowing the member to proceed too far, before he is checked, and then the gentleman, to whom the remarks were intended to apply, demands it as a right to be heard. Mr. Speaker should stop, without delay, the first indication that may be evinced of the sort alluded to. By such conduct he saves the time and preserves the dignity of the House, while he manifests his qualifications to preside over its deliberations. If it is understood, that the Speaker will enforce this part of his duty,—the most delicate while it is the most important, members will be cautious in stepping across the threshold of propriety. The Speaker will always find himself sustained by the

House, if he enforce the rules "without fear, favour or affection."

Rule 3. He shall decide questions of order. An appeal from his decision may be made by two members; or the Speaker may, in the first instance, submit the question to the House.

On questions of order there shall be no debate, except on an appeal from the decision of the Speaker, or on a reference of a question by him to the house, when no member shall speak more than once, unless by leave of the house; all decisions upon questions of order shall be noted by the clerk, and placed at the end of the journal of each session, with a reference to the decision as stated in the journal.

The Speaker should always decide questions of order himself. He is selected for his experience in Legislative business, and ought not therefore to put aside a question to be decided in the *first* instance by the House. The great probability will be, that he will decide correctly and save a considerable time, which would otherwise be lost in useless debate. And what takes a great share of weight from a decision by the House is, that usually a majority of the House is composed of new mem-

bers, who are therefore for the *first* time called upon to settle a point of order—a matter to which they are almost total strangers—And as there is a praiseworthy disposition to support the chair, it is most probable that its decision will pass unquestioned. But if the Speaker submits the question to the house primarily, he admits that he is not master of it, and thus puts a subject afloat, for a tedious discussion, that will not be more likely to be decided correctly by them than if he had decided it himself; besides which, calling upon the house to decide, on points of order, begets a distrust in his judgment, and tends to encourage appeals, when he may decide what he feels confident is right. It is to the advantage of the house, as well as the speaker, that he should be considered well skilled in his duties and need not be instructed.

Rule 4. While the Speaker is putting a question or addressing the house, none shall walk out of, or across the house, nor in such case, or when a member is speaking, shall entertain private discourse, nor while a member is speaking, shall pass between him and the chair.

It is exceedingly annoying to be interrupted by persons walking in and out of the House, while the Speaker is putting the question, or a member is addressing the House.

Rule 5. The Speaker shall appoint the members of standing and select committees, unless otherwise ordered by the House.

Rule 6. Acts, addresses and joint resolutions shall be signed by the Speaker, and writs, warrants and subpœnas, issued by the House, shall be signed by him, and attested by the Clerk.

This is a rule lately introduced into the code of regulations of the House. I remember, when Speaker of the House of Representatives, I looked into my authority to sign bills, as there existed no act of the Legislature upon the subject. I found it was sanctioned by custom before I held the station of Speaker, and of course signed the several enactments of the Legislature, while I was the presiding officer of the House of Representatives. In looking into the rules adopted immediately after the framing of our State Constitution, I find the following, offered by Mr. Gallatin, seconded by Mr. Evans:

Resolved, That when bills are engrossed, they shall be examined and compared with the transcribed bills, as passed in the two Houses, and the errors that may be discovered in the engrossed bills, corrected in each House respectively in such manner as each House respectively may think fit.

2. *Resolved*, That after a bill shall be thus examined and compared in the House in which such bill shall have originated, it shall be signed by the Speaker of that House and transmitted by the clerk to the other House, where it shall likewise, after examination, be signed by the Speaker, and returned by the Clerk to the House in which the bill shall have originated.

3. *Resolved*, That after a bill shall have been thus signed and returned to the House where it shall have originated, it shall be presented by the committee appointed by such House to the Governor for his approbation, it being first endorsed, certifying in which House the same did originate. The said committee shall report the day of presentation to the Governor, which *time* shall be entered on the journal of the House.

4. *Resolved*, That all orders, resolutions

and votes, which are to be presented to the Governor for his approbation, shall also in the same manner be previously engrossed, examined and signed, and shall be presented in the same manner as is provided for in the case of bills.

Of Signing Bills.

The practice of signing bills has grown out of these resolves, and although they have not been transcribed into the body of rules, they have produced the same effect as if they had been annually adopted by the two Houses of the Legislature.

Rule 7. He shall have a general direction of the hall. He may name a member to perform the duties of the chair, but such substitution shall not extend beyond an adjournment.

This is copied from the rules of Congress, and will doubtless be found very beneficial in its effects. In case of the Speaker's indisposition, business need not be interrupted, as by this rule he can substitute a member for a morning or an afternoon, the rule requiring a new substitution after every adjournment,

Of the Order of Business.

Rule 8.—After the reading of the journal, the order of business shall be as follows:

1st. Letters, petitions, memorials, remonstrances, and accompanying documents, may be presented and referred.

The minutes having been read, and if erroneous, corrected, the Speaker announces, "It is now in order for letters, petitions, memorials, remonstrances and accompanying documents to be presented and referred." As soon as the Speaker has stated that petitions are in order, gentlemen rise in their places, and whoever meets the Speaker's eye first, obtains the preference: he states, "Mr. ——, from the county of Erie, will proceed." The member commences: "Mr. Speaker, I have been requested to present a *memorial* signed by a number of the inhabitants of this commonwealth, residing in the counties of Erie, Crawford, Mercer, Warren and Venango, praying for the establishment of a Bank to be located at Meadville, in the county of Crawford, to be called the Bank of Crawford." Having given this succinct account of his petition, he walks up to the Speaker, hands

it to him, and returns to his place. The Speaker rises to receive the memorial, and holding it in his hand says: "A memorial has been presented, signed by a number of the inhabitants of Erie, Crawford, &c. repeating the counties—the purport of which has been stated by the member who presented it." "It will be referred to the committee on Banks." If, however, the memorial had prayed for the division of a county, there being no *standing* committee upon the "division of counties," as in the case of "Banks;" the Speaker, after having remarked, that "The purport of the memorial had been stated by the gentleman who presented it," would have asked—"What order will the House take upon the memorial?" The member presenting it will say: "Mr. Speaker, I move it be referred to a special committee." If seconded, the Speaker then says: "It has been moved and seconded, that the memorial just presented be referred to a committee—will the House agree to the motion?" There being no objections, the Speaker says: "It is agreed to." He then asks, "Of what number shall the committee consist?" The member says: "Three," three is named, and the Speaker

says, "as there are no objections to that number, the committee will consist of three. The committee are Messrs. A. B. C."

Suppose a member had, on a former day, presented a petition, and to-day wished to present a document to support the prayer of that petition. He merely rises, and says, "Mr. Speaker, I present a document in support of the claim of — an old soldier; his petition has been referred to the committee on claims." The member hands it to the Speaker, in the same manner as if it were a petition. And the Speaker repeats, "a document has been presented, in support of the claim of — an old soldier—It will be referred to the committee on claims."

Letters are usually sent under cover to the Speaker. He announces them as follows: "A letter addressed to the Speaker, signed 'A. B.' it will be read," and hands it to the clerk, who reads it. As soon as read, if it refers to a subject committed to a *standing* committee: the Speaker says: "It will be referred to the committee intrusted with that subject." If it is a special subject, and no motion is made to refer it, he says, "It will be laid on the table."

Rule 2. Original resolutions may be offered; items of unfinished business may be referred; leave of absence and leave to withdraw petitions and documents, may be asked; and motions to appoint additional members of committees may be made.

Original Resolutions.

As to offering an original resolution, see the proceedings upon the resolution relative to the furnishing of newspapers to members of the House, page 112.

Items of Unfinished Business.

Items of unfinished business are disposed of in the following manner. Some subject of legislation has been partially acted upon at a former session, but for want of time or some other cause, was not finally disposed of. A member from a county interested in this matter finds, that on page 441, on the journals of the House, the subject remained unfinished. He therefore says: "Mr. Speaker—I move that an item of unfinished business to be found upon page 441, of the journals of the late House, relative to making an appropriation, to improve the road between Harrisburg

and the borough of York, be referred to a committee."—The Speaker asks, if the motion is seconded, and if answered in the affirmative, puts the question: "Will the House agree to refer the item to a committee?" No one objecting, he says: "It is agreed to; the committee are Messrs. A. B. C,"--always putting the mover first: for he is presumed to understand the subject. Sometimes 20 or 30 items are referred in a morning, and an expert Speaker will not always look to the page of the Journal; but recollecting what is the nature of the item, refers it, without delaying the House, by looking either for the item or the page.

Leave of Absence.

The following is the mode of asking leave of absence: "Mr. Speaker,—I have been requested to ask leave of absence for Mr. ——, of the county of ———, for a few days, from to-day." Sometimes he asks leave of absence for himself. The Speaker, rising, says,—Mr. ——, from the county of ———, asks leave of absence for his colleague, Mr. ——, for a few days, from to-day. Shall the gentleman have leave? If the motion is agreed to, he says, Mr. —— has leave.

Withdrawing Documents.

A member wishing to withdraw a petition and documents, says: "Mr. Speaker,—I have been requested to withdraw the petition and documents of ———, an old soldier." Mr. Speaker then says: "Mr. ——, from the county of ———, asks leave, &c. Shall he have leave?" "Aye." "He has leave to withdraw the petition and documents."

Additional Members added to Committees.

A member rises and says: "As this is the proper time to make application to the House to appoint additional members to committees, I move, Mr. Speaker, that two members be added to the five already appointed, to report upon the propriety of dividing Mifflin county." The Speaker states the motion, and puts it; and if it is agreed to, immediately names the two additional members.

Reports of Committees.

The Speaker says: "Reports of committees will be now in order.

Reports of committees may be made:

1st. From standing committees.

From select committees.

Reports are made as follows:

"The committee on claims report, That having duly considered the vouchers produced in favour of the claims of —— to a pension, they are fully satisfied that he does not come within the class of persons the state has heretofore granted relief to. They therefore offer the following:

Resolved, That the petitioner have leave to withdraw his petition and documents."

If the member who presented the petition upon which the committee here report, wishes for a few days delay, the chairman of the committee, when the Speaker asks what order shall be taken upon the resolution, says, "lie on the table." The Speaker then says, "it will be laid on the table." But if no delay should be asked, the chairman of the committee of claims will move, "that the House proceed to the second reading and consideration of the *resolution* attached to the report"—And the Speaker puts the question, and the proceedings are the same as in the case of the newspaper resolutions, page 112. If the committee of claims however, should have come to the conclusion that the applicant was entitled to a pension, the chairman would have

made the following report: Mr. Speaker, the committee to whom was referred the petition and documents of ——, a revolutionary soldier praying for relief, report a bill, entitled "An act for the relief of ——, a soldier in the revolutionary war." Connected with this title is the section granting relief.

The Speaker receives the bill from the chairman of the committee of claims, and says: "The committee on claims report a bill, entitled an act for the relief, &c.

A report from a select committee is made as follows:

The chairman, standing up in his place, says: Mr. Speaker,—The committee to whom was referred the petition of the administrators of John Jones, soliciting power to sell certain real estate, ask leave to report by *bill.*" The Speaker then says: "The committee mentioned by the gentleman in his place, ask leave to report by bill. Shall the committee have leave." They answer him in the affirmative. The Speaker says: "The member has leave." The member then rises, and makes the following report: "Mr. Speaker,—On leave given, I report a bill, entitled an act authorizing the administrators of John

Jones to sell certain real estate." He hands it to the Speaker, who states to the House, "The committee mentioned by the member in his place, on leave given, report a bill," repeating the title. He hands the bill to the Clerk, who puts its proper number upon it, as all private bills take order according to their number, which is marked at the time of their presentation to the House.

I have often thought, it would be as well to allow all committees to report without putting the chairman to the trouble of "asking leave," or the Speaker to the necessity of submitting so many questions to the House. To avoid in some measure, the inconvenience of putting separate motions for leave, it frequently happens, in the commencement of the session, that when a member moves that a petition of a special character should be referred to a committee, he adds the following words, "with leave to report by *bill* or otherwise." When this is the case, select or special committees report as if they were standing committees, leave having been granted them to do so, at the time of their appointment. Where, however, a select committee has agreed to *report* without a bill, for in-

stance against the proposition committed to their charge, they do so *without asking leave.* To a report, a *resolution* is always attached, either recommending that the committee be discharged from the further consideration of the subject, or that the committee be authorized to bring in a bill in conformity to the prayer of the petition. In either case, as soon as the Clerk has read the report and resolution, the Speaker asks, "What order will the House take upon the *resolution* attached to the report?" For further proceedings on resolutions, see page 129, on the resolution connected with the report of the committee on claims. It is, therefore, the *resolution* that is acted upon, and not the *report.* Sometimes, however, when a committee may wish to place their reasons upon some matter submitted to them, upon the Journal, and yet leave the House little or nothing to act upon, they append a resolution of this kind: "That the committee be discharged from the further consideration of the subject."

To vote for or against such a resolution, by no means affords any just conception of the reasons of a member's vote; for the *whole House* may be willing to discharge the com-

mittee, and yet not for reasons contained in this report. To meet this difficulty, a member usually prepares what he calls a substitute, containing the reasonings of the opposition to the report, and ending with a resolution; and when the question comes before the House, he makes the following motion: "Mr. Speaker,—I move that the resolution, together with the report, (on the subject, stating it) be postponed, for the purpose of introducing the following, as a substitute;" which motion, if seconded, the Speaker states, and by this expedient the substitute is placed upon the journals with the original report; and he thus obtains a vote thereon, expressive of the wish of the House.

Reports of Committees Amended.

During the session of 1823–4, a report was made upon an item of the governor's message relative to the choosing of electors of President and Vice-President of the United States. The report was accompanied by a resolution requesting that the committee might be discharged from the further consideration of the subject. Many of the members said, that the report was not such an one as ought to be

adopted by the house. That it was drawn up with the view of supporting the caucus system. On page 362, we find, on motion of R. Smith and Mr. Roberts, the house resumed the consideration of the *resolution* attached to the report of the committee, relative to changing the time and place of meeting of the electors of President and Vice President of the United States, postponed on the fifth instant; when a motion was made by Mr. Todd and Mr. Holgate, That the house resolve itself into committee of the whole for the express purpose of "amending the *report*, so that it will contain no expression for or against either a congressional or state caucus;" and on agreeing to the question, the yeas were 62, nays 26. So it was determined in the affirmative. Page 379, the house resolved itself into committee of the whole, and the chairman reported the same with one amendment. Whereupon the house resumed the second reading of the report, and the *resolution* thereto attached was considered and adopted. And the *report* being under consideration, a motion was made by Mr. Norbury and Mr. Roberts to amend the same by inserting after the word "public" in the fortieth line from the top of

the 4th page these words: "to maintain this principle seems to become a serious duty, whether it be assailed directly and openly or by implication, and firmly to adhere to the example set by those who have gone before." These were the words that had been stricken out in committee of the whole. See the whole report, 339.

I have gone somewhat into a detail upon this question, to show, that here the Legislature allowed the *report* to be amended in committee, and no objections were made as to Mr. Norbury's motion being out of order to amend the report when it was before the House on a second reading. In this instance, therefore, the report was reached without introducing a substitute, and will be a very good mode of correcting reports hereafter: for in this case the report was *every thing*, the *resolution nothing*—to pass upon the resolution was therefore a subject of no importance. Indeed I can see no good reason why a *report* to which a resolution is attached, should not be subject to amendment or correction in the same manner as preambles to bills.

4. Bills on third reading.

5. Reports and resolutions may, on motion, be considered.

It frequently happens that reports or original resolutions are offered, and laid on the table. On the next or some subsequent day, it is in order to move, to proceed to the second reading and consideration thereof. This rule points out the time when it can be done: "The resolution read on the fourth instant, relative to authorising the inhabitants of the city of Lancaster, to raise money by way of lottery, for the purpose of introducing water into the said city, was read a second time; and on the question, 'Will the house agree to the same?' the yeas and nays being required by Mr. Chandler and Mr. Potts, were as follows, yeas 38, nays 40." Thus it appears, that the resolution was not agreed to."

6. Motions to reconsider may be made.

The preceding resolution was negatived, Jan. 6, 1826, page 145, Journals 25, 26. On January the 7th, the next day, page 158, Mr. Ellis, seconded by Mr. Petriken, moved, that the house *re*-consider the vote given yesterday on the resolution relative to authorising the

inhabitants of the city of Lancaster to raise money by way of lottery," &c. The mover and seconder, having waited till the Speaker announced the proper time for motions of reconsideration, and having brought themselves within the 19th rule, which provides that "no motion for reconsideration shall be permitted, unless made and seconded by members in the majority on the vote on the original question, and *within six days*, exclusive of Sundays." After the decision, the Speaker states: "It has been moved and seconded to reconsider the vote given on the 6th instant, relative to granting a lottery for the introduction of water into the city of Lancaster," "As many as are in favour of reconsideration will say Aye. The contrary will say No. The ayes have it. The reconsideration is agreed to." And the question recurring: 'Will the house agree to the resolution?' a motion was made that the house adjourn, which was agreed to.

This motion for adjournment was received in pursuance of the 18th rule, which prescribes that "a motion for adjournment shall *always* be in order, and shall be decided without debate, except that it cannot be received when

the house is *voting* on another question, nor *while* a member is *addressing* the house. Page 167: "The house resumed the consideration of the resolution relative to the Lancaster lottery which was pending when the house adjourned on the 7th inst. after which, (page 168) a motion was made by Mr. Haines and Mr. Baker, to postpone the further consideration of the same until Thursday next, which was agreed to. Page 180, the consideration of the resolution postponed on the 10th inst. relative to the Lancaster lottery was resumed: and on the question, 'Will the house agree to the resolution,' the yeas were 48, nays 41; so the motion was determined in the affirmative."

I have traced this resolution, from the first vote, when it was negatived, till its reconsideration and final adoption, that it may be illustrated by example, sufficiently striking to impress it upon the recollection of the reader. I have known many instances, where motions have been made to proceed to the consideration of a resolution, laid on the table on some previous day, and the House have refused to proceed. When this happens, persons interested in the resolution, are not precluded, on

some other day, making another motion to take up this resolution. Nor can he be prevented from making the motion every day, *at the time* when his motion is order, until the House has taken up his resolution and finally disposed of it, by either voting for or against it. If a member however, discovers that there is a decided majority against his resolution, he usually contents himself by making one decided effort to get it up, and if he feels anxious to show how he voted on the subject, and that he used his best exertions to carry it, and fails, he calls the yeas and nays and records his vote in favour of taking it up.

Of Bills.

1st, those in which the house has made progress on a second reading.

2nd, those reported by a committee of the whole.

3rd, those in which the committee of the whole has made progress and has leave to sit again.

4th, bills not yet considered in committee of the whole, shall be taken up.

Every bill has a title, and one or more sections, and sometimes a preamble.

Rule 30.—Every bill shall receive *three* several readings in the House, the two last of which shall be at length, previously to its passage, but no bill shall be read twice in the same day; and all bills and joint resolutions, after the first reading, shall be printed for the use of the members, unless otherwise ordered by the House, and shall be read in committee of the whole: public bills shall be made the order of a particular day, and shall, when called for, have the preference of private bills, which shall be taken up according to their seniority, reckoning from the date of their introduction into the House, and when any bill shall be presented from the Senate for concurrence, the Speaker shall determine, or the House may order upon the printing the same, and direct accordingly.

Rule 24.—When the House resolves itself into a committee of the whole, the Speaker shall appoint a chairman, unless otherwise ordered by the House.

Rule 23.—The rules and proceedings observed in the House, shall be observed as far as they are practicable in committee of the whole, except that a member may speak oftener than twice on the subject; nor can a

motion for the previous question be made therein.

Public bills are such as are general in their operations, and relate to the whole state.

Private bills are local in their nature, and are such as are limited in their provisions to particular counties or districts. The Speaker most generally determines whether a bill is public or private; yet the House may determine a bill to be of either description, notwithstanding his opinion may be to the contrary. The Speaker, therefore, on a bill being presented by the Clerk of the other House, or by a committee of the House of Representatives, will say, after reading the title, "this is a public bill," and asks: "What day will the House assign for its second reading and consideration?" A day is commonly mentioned by a member or the committee having the care of it: and if no objections are made to that day, the Speaker asks; "Shall the bill be an order for that day?" which being agreed to, he says: "It will be in order for that day." The Clerk marks the day on the bill. Private bills the Speaker hands to the Clerk, and he gives them their numerical order.

A private bill sometimes takes the preference of a public bill, as where the private bill has been progressed in on a former day, and comes up regularly in order. Motions are sometimes offered to make a bill the "first order" of a particular day. But making a bill the *first* order, gives it no preference, unless it be over bills that have not been acted upon; or if acted upon, have their order fixed for a distant day. I have made this remark here, because members are apt to believe that a first order takes the preference of all bills. It would be very unfortunate if it did, as it would greatly tend to derange the regular business of the House.

One of the modes devised to give a private bill, what may be called "an order" in the House of Representatives, is to move that the House resolve itself into committee of the whole, upon the bill, and as soon as the chairman has taken the chair, to get the committee to rise, report progress and ask leave to sit again, and a day will be assigned for the committee having leave to sit again. On that day the bill is an order.

Suppose a committee has been appointed and reported the following bill, No. 1, en-

titled "An act to incorporate the Pennsylvania Infirmary for diseases of the eye and ear." At the time this bill is presented to the Speaker, by the chairman of the committee, he states that "the committee for that purpose appointed report bill No. 1." (repeating the title.) The reading of the title is the first reading of the bill. This is so well settled a practice in the Pennsylvania Legislature, that if a member should require the clerk to read the body of the bill at the time it was reported, he would be considered as uselessly wasting the time of the House. The bill being handed to the clerk, he immediately numbers and sends it to be printed.—As soon as printed it is returned to the House, and without delay placed upon the file of bills. Having thus disposed of all the preceding matters, and bill No. 1. being now in order, the Speaker, opening his file of bills, says, "The next business in order is the consideration of bill No. I. entitled," &c. reading the title. Having gone through the title, he says, "As many as are in favour of proceeding to the consideration of the bill, will say aye," and reversing the question, he says "as many as are opposed to it will say no." If the ayes have it,

he will say "the ayes have it. It is agreed to." He then calls one of the members to the chair, by saying, "Mr. —— will please to take the chair." Mr. —— immediately leaves his seat, carrying with him his file of bills, and walks up to the Speaker's desk, and as Mr. —— is ascending the steps on one side of the chair, Mr. Speaker is descending the steps on the other side; and having politely bowed to each other, the chairman takes the vacant chair, and the Speaker retires to the seat of the member called to officiate as chairman, or any other vacant seat. The chairman, being thus possessed of the Speaker's station before he takes his seat, reports as follows: "The committee of the whole have referred to them bill No. 1, entitled," reading the title throughout, he then says "the first section will be read." The clerk then stands up in front of the Speaker's desk, now occupied by the chairman, and reads the first section.

As soon as he has finished reading, the chairman says, "The first section is before the committee." This he does sitting. Indeed all questions are usually stated by the presiding officer sitting. If there are no objections urged against the section, he asks, "is the

committee ready for the question?" and being answered in the affirmative, rises and says, "As many as are in favour of the section will say Aye." "The contrary opinion No." If the ayes have it, he will say, "the section is agreed to." He then says, "The second section will be read." The clerk reads it in the same manner as the first: and when done, the chairman says, "The second section is before the committee." If he has discovered that there are no objections to the bill, instead of putting the affirmative and negative, he merely asks, "Will the committee agree to the second section?" If the bill has but two sections, as soon as the second section has been read and considered, the chairman states: "The bill is gone through." But if the bill should have a preamble attached to it; in that case, the preamble must be read, and the question taken on it before the committee rises. The preamble being disposed of, the chairman says, "the committee will rise." The preamble is always read *after* the sections have been passed. The Speaker then proceeds towards the desk, and as he is ascending on one side, the chairman retires on the other, and again they bow to each other.

The Speaker having now resumed his place, but not having taken his seat, and the chairman having retired to his own desk, standing in front of it, makes the following report: "Mr. Speaker, the committee of the whole have had under consideration bill No. 1, upon the files of the House of Representatives, entitled 'An act,' (repeating the title,) and have instructed their chairman to report the bill without amendment."

Suppose the bill in question had but one section, and the committee had disagreed to the section; then the report would have been as follows: "Mr. Speaker, the committee of the whole have had under consideration bill No. 1, &c. (repeating as in the other case,) and have instructed their chairman to report the *first* and only section negatived."

Suppose there were more than one section, but that all the other sections were dependant upon the passage of the first, and that section was negatived: the committee would rise, without going any further than the first section, and the chairman would report the first section negatived.

But suppose, instead of agreeing to the 1st and 2d sections of the bill, both sections had

been amended in committee. In that case, the chairman says, he was "instructed to report it with amendments." When I became a member of the Legislature in 1814, the practice was to ask if the amendment should be read over, on the bill being reported to the House. The question was always asked, but the reading of the amendments was never agreed to. To get rid of this practice, I offered a resolution, which is now embodied in the rules of the House, and is as follows:

Rule 25. Amendments made in committee of the whole, shall not be read by the Speaker on his resuming the chair, unless required by one or more of the members.

On the first report being made, that the bill has been agreed to by the committee of the whole without amendments, the Speaker says: "The chairman of the committee of the whole reports without amendments bill No. 1, on the files of the House of Representatives, entitled" &c. or "with amendments." If the section is negatived, he says: "The chairman reports, that the committee have instructed him to report the first section negatived."

It not unfrequently occurs, that after a long debate, the committee is not able to get

through the bill at the hour of adjournment, or for other reasons, it is deemed expedient that the committee should rise. Some member moves, "That the committee rise, report progress, and ask leave to sit again." The chairman then states the question; if seconded, and concurred in, the Speaker resumes the chair and the chairman his place in the house, and makes the following report: "Mr. Speaker—The committee of the whole have had under consideration bill No. 1, upon the files of the House of Representatives, and not having had time to go through the same, have instructed their chairman to report progress and ask leave to sit again." The Speaker then says: "The committee of the whole have had under consideration bill No. 1, entitled, &c. and not having had time to go through the same, have instructed their chairman so to report and ask leave to sit again"—he then says, "The question will be, on granting the committee of the whole leave to sit again." If there appear no objection, he will ask: "Shall the committee of the whole have leave to sit again?" when, if agreed to, he will say: "At what time?" the answer may be "to-morrow," "next Thursday" or "this day

two weeks"—or any other day. The Speaker then says: "To-morrow," "next Thursday" and "this day two weeks" "have been named." "The question will be on the most distant day." "As many therefore as are in favour of this day two weeks, will say, Aye." "The contrary opinion will say, No." If the ayes have it, he will say so—and observe, "The committee of the whole will have leave to sit again on this day two weeks." The clerk marks the day upon the bill, and the journal is made up accordingly. But suppose the object of the members who succeeded in getting the committee of the whole to rise, should be, to get the bill before the house, and prevent the extensive debate, that it was likely to undergo in committee of the whole, where a member may speak as often as he pleases, and consume a number of days in discussion. In that case, when the question is put by the Speaker, "Shall the committee of the whole have leave to sit again?" they will vote against the committee having leave; and if they succeed in their opposition and the committee should be refused leave to sit again, the bill comes up immediately before the house on a second reading. The

house seldom proceeds upon a second reading of the bill *immediately*, unless in a case of emergency, as in a revenue bill or the like, and the close of the session is rapidly approaching. It is most customary to postpone the further reading of the bill till next day.

Page 913, Journal 20, 21—I find the following:

In the evening the house resumed the second reading of bill No. 234, entitled, a supplement to the several acts of the General Assembly respecting auctions and auctioneers:—When the Speaker submitted the following question of order to the decision of the house, viz: "Shall the amendments made in committee of the whole be considered as a part of the bill? the committee having reported progress and asked leave to sit again, and the house having *refused* to grant *leave*." The yeas and nays were required by Mr. Forward and Mr. Good, on the question, and are as follows, yeas 51, nays 33.

Mr. Speaker Gilmore voted in the negative, and correctly. But his mistake was, in not *deciding* at once, that the amendments made in committee, when the committee reported progress, did not belong to the bill, as

they never had been reported to the House. The bill stood before the house on a second reading in this instance, as if it never had been in committee. What makes this case of still less authority is, that it was decided in the evening, and on a revenue bill, when there seemed to be more anxiety to get the bill through the House, than to adhere to the old land-marks of order. This proceeding took place on the evening of the 25th of March, and the Legislature adjourned on the 3d of April.

When the chairman of the committee of the whole reports the first section *negatived*, or the bill negatived, or the like, the Speaker, after repeating that he reports the bill negatived, puts this question: "Will the House agree to the report of the committee?" And if it is decided in the affirmative, the bill is lost. If the report of the committee should be disagreed to, then the bill comes before the House upon a *second reading*. This occurrence seldom takes place. Where the bill has been negatived in the committee, the most ordinary practice is, to move to postpone the question of agreeing to the report of the committee negativing the bill, for the pre-

sent; which motion, if carried, is rarely, if ever disturbed—and the bill is in this way thrown out of the further consideration of the House. A member may, it is true, make an attempt to reconsider the motion within the six days allowed for that purpose; and if he finds the vote nearly balanced, he may possibly gain some proselytes to his interest in that time, and may therefore endeavour to have the report of the committee disagreed to, and thus have the bill again before the House.

An error that new members are likely to fall into, is the belief, that the reading in committee of the whole is one of the three readings contemplated by the rules of the House. They sometimes, also, request the yeas and nays, which cannot be called in committee.

An old member turns all the rules of the House to advantage, while a new one, whatever may be his talents, approaches every subject connected with the rules, hesitatingly. A careful examination of what I here lay down for his guidance, will however enable him without fear to obtain all the advantages resulting from an intimate knowledge of the rules.

Bill No. 1, entitled, &c. having been re-

ported, goes over to the next day, when it comes up for a second reading, in the order which is announced by the Speaker. I should here remark, that it is in order, if a member thinks proper to propose it, and a majority of the House sustain him, to proceed upon the second reading of the bill as soon as the Speaker has gone through the report made by the chairman. This is the practice near the close of the session, when business is crowding upon the consideration of the House.—The time having arrived for the second reading on the succeeding day, the Speaker says: "The business next in order is the second reading and consideration of bill No. 1, upon the files of the House of Representatives," [reading the title.] The Speaker then says: "As many as are in favour of proceeding to the second reading and consideration of bill No. 1, will say aye." "The contrary will say no." If the ayes have it, the Speaker says: "It is agreed to. The first section will be read." The Clerk then reads the section, as was done in committee of the whole, and the questions are taken in the same way. Having gone through all the sections, the Speaker then says: "The title will be read."

The Clerk then reads the title. The Speaker says: "The title is before the House." "As many as are in favour of the title will say aye." "The contrary opinion will say no." The title being agreed to, the Speaker then says: "This bill has now been read a second time, considered and agreed to; the question will be on transcribing it for a third reading." "As many as are in favour of transcribing the bill for a third reading, will say Aye." "The contrary opinion will say No." If a majority should be in favour of the bill, the Speaker will say: "The question is agreed to. The bill will be transcribed for a third reading."

On the next morning it will come up in its proper order; when the Speaker will say—"the next business in order is the third reading of bill No. 1," reading its title. No question is put to know whether the house will proceed to the reading of it: but as soon as the Speaker has read the title to the house, he will say, "The clerk will read the bill;" and this is done from the beginning to the end, without a question being put upon any of its sections. During the time the Clerk is reading the transcribed bill, the Speaker is carefully examining the printed bill, which was

directed to be transcribed by the House on the preceding day, to detect errors, if any may have been committed in transcribing. If any are discovered, he stops the clerk, and orders them to be corrected. As soon as the bill has been read by the clerk, the Speaker says: "The bill is before the House." "The question will be on its final passage." "Is the House ready for the question?" and being answered in the affirmative, he rises to put the question, and says: "As many as are in favour of the passage of the bill will say Aye." "The contrary will say, No." If the ayes have it, he will say, "The ayes have it." "The bill passes." He hands it to the clerk, who notes the proceeding, makes the necessary endorsements, and as soon as he can conveniently leave the House, passes to the Senate chamber, where the sergeant-at-arms announces: "The clerk of the House of Representatives." The Speaker repeats: "The clerk of the House of Representatives," rising for that purpose: when the clerk, having advanced a short distance within the bar of the Senate, says—"Mr. Speaker, I have been directed to present to the Senate for concurrence, bill No. 1, entitled," &c. reading the

title, and bowing to the Speaker, retires. The Speaker takes his seat, and proceeds with the business of the Senate, that was interrupted by the entrance of the clerk.

But if some small amendment is requisite to be made, or some important omission has been discovered, that only requires to be mentioned, to be rectified, some one of the members rises and states it, and moves that it be amended, so as to remove the objection. The Speaker asks if the motion is seconded, and having discovered that it is, he says: "It has been moved and seconded to amend the bill in section 2, line 4." He says, "This question must be unanimously agreed to, as no amendments can be received on a third reading without the consent of the whole House." He puts the question: "Will the House agree to the amendment?" If no one objects, he says, "The amendment is agreed to." The question on the passage of the bill will then recur. But it not unfrequently happens, that a whole section is very objectionable, or many parts of the bill, and that some of the members are desirous of making one more effort against the passage of the bill in its present shape, and it having been

shown that no amendments can be made upon a third reading unless unanimously approved of, an expedient has long been in use of reaching the object in another shape: and that is by making a motion that the House resolve itself again into committee of the whole, for the purpose of striking out section *two*, if that be the only one not approved of; or if the bill is thought to be defective in many points, it is moved that the House resolve itself into committee of the whole for the purpose of "general amendments." And if this motion should succeed, the Speaker calls the former chairman, if present, if not another one, to officiate in committee of the whole. And the sections are all read as formerly, and the question taken upon them generally, or such sections as are not disapproved of need not be read, but only those, where amendments are intended to be offered, or where whole sections are disliked, they are read, that they may be passed again or rejected by the committee. If the House should, however, go into committee for a special purpose, as, for instance, to strike out the second section, the moment that question is decided, the object of the commitment is at an end, and the commit-

tee must rise. If when the bill is recommitted to the committee of the whole for general amendments, and no amendments are made, the committee rises, and the chairman "reports the bill as committed." If amended, he "reports the bill with amendments:" and if the second section should be stricken out, he "reports the bill with one amendment." The question then presents itself again upon the bill as originally before the House, or as amended, and the question is on its final passage.

Having traced the bill into the Senate, I will now show its progress there. The Speaker embraces the first opportunity, after having disposed of what was pending before the Senate, of rising and stating, "A bill, No. 1," (holding it in his hand,) "is presented for concurrence from the House of Representatives, entitled 'An act,' (reading the title.) The bill is then handed to the clerk, who sends it to the printer. As soon as it has been printed, the sergeant-at-arms puts the bill upon the files of the Senate. There are two files of bills: the one containing the *Senate* bills, the other the *House of Representatives* bills. Each member in each House has there-

fore two files. When bill No. 1, was printed in the House of Representatives, a sufficient number was stricken off to supply the members of both Houses. Bill No. 1, therefore, was on the file of bills of the House of Representatives belonging to every Senator, before it was sent to the Senate for concurrence. If bill No. 1, therefore, passed the House of Representatives, just as it was originally printed in that House, it will be unnecessary for the clerk of the Senate to send it to be re-printed: but what is most usual is that the bill has been amended, and therefore must be re-printed, unless the amendment may be too trivial to authorize the expense. Suppose then it should be re-printed. The clerk lays it upon the Speaker's table, in company with the other bills that may have been sent from the House of Representatives for concurrence. And the Speaker, just before the adjournment in the morning, (he can do it at any time, however,) rises and says—"Bill No. 1, from the House of Representatives, upon which no order has been taken; "what day will the House assign for the second reading of this bill?" Tuesday next, says some one of the Senators. "No other

day being mentioned," (the Speaker says,) "it will be in order for that day." In this manner he disposes of all other bills.

The day having arrived when the bill comes up in the regular order, the Speaker puts the same question as the Speaker of the House of Representatives. After observing that the next business in order is the consideration of bill No. 1, (reading the title,) he asks if the House will proceed to the consideration of it. Which being determined in the affirmative, he calls Mr. A. to the chair. The Speaker in the Senate always calls the Senators *alphabetically* to the chair. The proceedings are the same in the Senate on the bill as in the House of Representatives.

The bill having gone to a third reading, it passes over till the next day, when it comes up in order for its final passage. The clerk having read the bill, as in the House of Representatives, the Speaker says: "This bill originated in the House of Representatives, it has now been read a third time in the Senate. The question will be on its passage. "As many as are in favour of its passage will say aye," "the contrary no." "It is agreed to, the bill passes."

If bill No. I. received any amendments in the Senate, the clerk of the Senate returns it to the house in which it originated, and is received by the sergeant-at-arms, who announces, "The clerk of the Senate;" the Speaker repeats, "The clerk of the Senate," and the clerk states: "Mr. Speaker, I have been directed to inform the House of Representatives that the Senate have passed bill No. 1, upon the file of the House of Representatives, (reading the title,) with amendments, in which the concurrence of this house is requested." The Speaker of the House states: That the clerk of the Senate informs the house that bill No. 1, entitled, &c. has been concurred in by the Senate, with amendments in which the concurrence of this house is requested. Having laid the bill and amendments on the table, at a convenient time, the Speaker rises and says: "Amendments by the Senate to bill No. 1, upon the files of the house." The clerk then reads the amendments. Add "two new sections, as follows, (reading them,) to be called Sec. 6 and 7;" "number the other sections accordingly." The Speaker then asks: "What order will the House take upon the amendments?" It is then moved

and seconded, that the house proceed to the second reading and consideration of the amendments, which being agreed to, the amendments are either read, or the reading dispensed with upon a motion made for that purpose. As soon as read, or the reading has been dispensed with, the Speaker says: "What order will the house take upon the amendments?" A motion is then made to concur; if this motion is agreed to, information is immediately carried to the other house, that the House of Representatives concurred in the amendments made by the Senate. If, however, the house should be unwilling to concur, and the vote should have been against concurring, or if the motion had been "to non-concur," and that motion had prevailed; in that case, the clerk of the house would return the bill with the amendments to the Senate. After being duly announced by the Sergeant-at-arms and the Speaker, the clerk would say: "Mr. Speaker, I have been directed to inform the Senate, that the House of Representatives have 'non-concurred' in the amendments made by the Senate, to bill No. 1, from the House of Representatives, entitled, &c." In former times the Houses

used to proceed so far as to adhere, but of late years, it has not been the practice to proceed further than to insist. But, it may so happen that the amendments sent by the Senate, can be so amended by the House of Representatives, as to meet the approbation of that body. In such case, the following motion should be made: "Mr. Speaker, I move that the amendments made by the Senate to bill No. 1, entitled &c. be amended by striking out all that follows the word "four" in the fourth line, to the word "and" in the sixth line in the first amendment of the Senate, and insert the following, (here insert what may be required,) and also to strike out all that follows the word "ten," in the ninth line of the second amendment of the Senate, to the end of the section." The motion being seconded, the Speaker says: "Will the House agree to the amendments?" If agreed to, he says: "The amendments are agreed to." He then asks if the House will agree to the amendment of the Senate as amended? If it is agreed to, the clerk repairs to the Senate, and informs that body that he is instructed to inform the Senate, that the House have agreed to the amendments made to bill No. 1, entitled, &c. with

an amendment in which the concurrence of the Senate is requested.

If the Senate should concur in the amendment made by the House of Representatives to the amendment by the Senate, the Clerk informs the House of the concurrence. But where the amendments have been non-concurred in by the House of Representatives, and the information of such non-concurrence has been given to the Senate, the next step is for some member to move that the Senate *insist* upon their amendments—or, that the Senate *recede* from their amendments. If the Senate should, by a majority of votes, *insist*, the Clerk informs the House of the Senate's *insisting* upon their amendments. If, however, the motion to *recede* from their amendments had been made, and that motion had prevailed, the Speaker states: "The motion to *recede* has been agreed to." The Clerk carries the intelligence of the Senate's having receded, and addresses the Speaker of the House as follows: "Mr. Speaker—I have been directed to inform the House of Representatives, that the Senate have receded from their amendments made to bill No. 1, entitled, &c." The Speaker of the house rises, and repeats the

report. Here the bill would be considered as passed by the two houses, and should be handed over to the comparing committee. But if the Senate should not *recede*, but *insist* upon their amendments, the bill is returned, and the house is informed of the Senate's having *insisted*, and that A. B. and C. have been appointed a committee of conference by the Senate. As soon as the Speaker repeats the report of the Clerk of the Senate, a motion is made in the House of Representatives to *recede* from its non-concurrence in the amendments made by the Senate. If this should be made and fail, or if a motion to recede had not been made, then it is customary to move that a committee of conference be appointed, to confer with the committee appointed by the Senate upon the amendments pending between the two houses. As soon as this motion is agreed to, the Speaker appoints a committee, usually three, who must have voted in favour of non-concurring in the amendments. The clerk of the house informs the Senate, that that house has appointed a committee of conference to confer with the committee appointed by the Senate. The two committees fix upon a time and place of meeting. There

they suggest such modifications as the several parties may think most likely to compromise and settle the difficulties. If they cannot agree, they report their disagreement to the House, and thus the bill is lost. If the committees of conference agree on a report, they make it separately to each House, and recommend that it should be adopted. When both Houses adopt the reports, then the bill is handed to the comparing committee. Sometimes the Senate concurs in the report made by their committee, and the House refuse to sanction the report of their committee. When that happens, it is equivalent to the rejection of the bill. To exemplify the proceeding in reference to amendments and committees of conference, I have extracted the following from the Journals of the House for 1820–21, page 987.

The clerk of the Senate informed the House of Representatives, that the Senate had *receded* from their non-concurrence in the amendments by the House of Representatives, viz. sections 57, 58, and 59, line 12, to bill No. 360, entitled "An act for the regulation of the Militia of this Commonwealth," and *insist* on their non-concurrence in the amendments

to section 38, and *striking out* section 55; and have appointed Messrs. Hill, Barnard, and Marks, a committee on the part of the Senate, to confer with a committee of the House of Representatives, (if the house should appoint a committee,) on the subject of said amendments.

A motion was made, when this report was read, in the House of Representatives, by Mr. Weaver, seconded by Mr. Piper, that the house *recede* from the amendment to section 38 of the bill relative to the Militia, from the Senate, No. 360, non-concurred in by that body: which was agreed to.

The only remaining subject of difference between the two houses, was, upon the adoption of the 55th section. The house wished to strike this section out of the bill, and the Senate was anxious to retain it.

The Senate having appointed a committee of conference, it now remained for the house either to refuse to appoint a committee, and thus defeat the bill, or what I have always found to be the case, while I was in the legislature, to appoint a committee of conference.

Mr. Lawrence, seconded by Mr. W. Smyth, moved that a committee of conference be ap-

pointed to confer with the committee already appointed by the Senate, on the subject of the amendments by the House of Representatives to the Militia bill non-concurred in by the Senate, striking out the 55th section, which was agreed to. Whereupon Messrs. Lawrence, Todd and Robbins, were appointed the said committee, and ordered that the clerk inform the Senate of the same.

Page 993. Mr. Lawrence from the committee appointed to confer with a similar committee of the Senate on the subject of the amendment to the bill from the Senate, No. 360, entitled "An act for the regulation of the Militia of this commonwealth," made report, which was read as follows: viz:

The committee of conference have agreed to the following resolution, viz.

Resolved, That the 55th section of the said bill pass with the following amendments, viz. line 12, after the word 'to' insert 'or shall.' Line 13, strike therefrom the words 'directly or indirectly.' Lines 14 and 15, strike therefrom these words: 'or shall under any pretence whatsoever invalidate or defeat or shall assist to defeat any sentence of a court of appeal or court martial.' Line 36, strike out

all that follows the word 'state' to the end of the section.

And on motion, said report was read a second time, and the resolution thereto attached was considered and agreed to. And the clerk was ordered to inform the Senate of the same. The committee of conference on the part of the Senate, made a similar report, which was concurred in by that body, as appears from page 1005 of the journal. "The clerk of the Senate informed the house, that the Senate had adopted the report of the committee of conference on the subject of the amendment to bill No. 360, entitled 'An Act for the regulation of the Militia of this Commonwealth.'

Sometimes the one or other of the committees agree to a report, that the house they represent should *recede* altogether. When that is the case, the following is the form: Mr. Read from the committee of conference appointed to confer upon the amendments by the House of Representatives non-concurred in by the Senate to the bill No. 123, entitled 'A further supplement to an act entitled An Act for holding special courts of Common Pleas,' made the following report, viz. that they recommend that the House of Representatives

recede from their amendments to bill No. 123, on the files of the House of Representatives, non-concurred in by the Senate, and therefore offer the following resolution :

Resolved, That the House *recede* from their amendments to bill No. 123, non-concurred in by the Senate.

A question has been started, whether either house can amend the report. But it ought not to be a subject of doubt. It cannot be amended. The house can only concur or non-concur in the report or recommendation of the conference.

Upon the subject of conferences between the two houses, and to show the extent to which conferences have gone, I would call the attention of the reader to the proceedings of a committee upon the bill entitled "an act to establish the District Court for the city and county of Philadelphia," page 446, Journal of the Senate, for 1824–5. All the sections of this bill were agreed to, except the 9th which the House of Representatives wished to be striken out. The Senate *insisted* upon retaining it, and a committee of conference was appointed, and they agreed to recommend that the two houses should adopt the

9th section with amendment, and to *add* a *new section*, to be called section 10—and to make section 9 read section 11, and section 10 read section 12. The houses concurred in both amendments, and the conference in this instance proceeded further than I had ever known before, for they introduced an additional section.

If the reports of the committees of conference shall have been concurred in, as for instance in the case of the bill "regulating the militia of this commonwealth," and the clerk has amended the 55th section as reported by the conference and approved of by the two houses, it is handed to the comparing committee appointed pursuant to the 28th rule of the house. That committee carefully reads over the engrossed bill and compares it with the printed one and its amendments, to see that no mistakes or inaccuracies have crept into the transcribed copy. This engrosed bill goes through three readings, to prevent errors in copying, before it is signed by the Speakers. The transcribing clerk reads it. The Speaker of the house in which the bill originated, on its final passage follows the clerk while he reads it; and the comparing

committee read it also. During the whole time I was a member of the Legislature, I never knew but one mistake to pass the committee; and in the instance I allude to, it finally received the signature of the Governor. It was an amendment relative to the qualifications of persons eligible to be Inspectors of the Penitentiary in Philadelphia.

As soon as the committee have examined and found the engrossed bill correct, they hand it first to the Speaker of the House of Representatives, who signs it. They afterwards present it to the Speaker of the Senate, who also signs it. It is then carried by the comparing committee, one member at least from each house, for each house has its comparing committee, and they *jointly* perform their duties, who present the bill to the Governor for his approbation, pursuant to the 22d section of the 1st Article of the Constitution.

Page 1010, Mr. Kelton, from the committee appointed to compare bills and present them to the Governor for his approbation, made report, which was read as follows, viz: "That in conjunction with a similar committee from the Senate, they have compared, and on this day presented to the Governor for his approba-

tion, the bill entitled as follows, viz: 'An act for the regulation of the militia of this commonwealth.'" The committee keeps a book, in which they register the titles of all the bills, and the day when presented to the Governor, so as to know whether they are returned in time, agreeably to the Constitution.

If the Governor has no objections, as in this instance, he directs the Secretary of the Commonwealth to return it, with his approbation, in writing, as follows: "To the Senate and House of Representatives of the Commonwealth of Pennsylvania. Gentlemen,—I have this day approved and signed the following act, and directed the Secretary of the Commonwealth to return the same to the house in which it originated, viz: 'An act for the regulation of the militia of this commonwealth.

By the 23d section of the first article of the Constitution, it is directed, that every order, *resolution* or vote, to which the concurrence of both Houses may be necessary, (except on a question of adjournment,) shall be presented to the Governor, and before it take effect, be approved by him or being disapproved shall be repassed by two-thirds of both Houses, ac-

cording to the rules and limitations prescribed in case of a bill." The provision, relative to *resolutions*, that are *concurred* in by both Houses, requiring the *signature* of the Governor is subject to some limitation. There are many *joint* resolutions, that are never presented to the Governor for his approbation. The construction put upon this section of the constitution, is, that the resolution must be in the *nature of a law*, and not one appertaining to the two Houses only, that invariably requires the concurrence of both Houses.

As to the powers of the Legislature, under resolutions of the two Houses, without being presented to the Governor for his approbation, see the journals of the Senate and House of Representatives, for the session of 1821, '22, relative to the election of a United States Senator.

Having thus expressed my opinion upon a bill and a resolution, it will be expedient here to remark, upon the proceedings of the Governor and the Legislature in case he should have returned the "militia bill" within ten days, (Sunday excepted,) to the House in which it originated, with his objections. The objections are to be entered at large upon

the journals, and the House is to proceed to *reconsider* it. Here a question has been raised, whether the *reconsideration* must be *forthwith*, and it has been decided, that the House need not proceed *immediately*. In 1821, '22, (see page 1157 of the Journal of the House of Representatives,) the Governor returned with objections the bill entitled "an act to provide for the election of Representatives of the people of this State in the Congress of the United States." The bill with the objections were laid on the table, and the *reconsideration* postponed until the afternoon.

The bill "supplementary to the act incorporating the Roman Catholics worshipping at St. Mary's Church in the city of Philadelphia," which was returned by the Governor without his signature, was *postponed* for *reconsideration* until the next day. If after the reconsideration, two thirds of that House shall agree to pass the bill, it shall be sent with the objections to the other House, where likewise it shall be reconsidered; if approved by two thirds of that House it shall be a law.—But in such cases the votes of both Houses shall be determined by *yeas* and *nays*, and the names of the persons voting for or against the

bill, shall be entered on the journals of each house, respectively. If any bill shall not be returned within ten days (Sundays excepted,) after it shall have been presented to him, it shall be a law in like manner as if he had signed it, unless the General Assembly by their adjournment prevent its return, in which case it shall be a law, unless sent back within *three* days after their next meeting. If the bill should be passed by two-thirds in both houses, it is signed and attested by the clerks. It is evident therefore, that the Senate and House of Representatives are invested with the whole legislative power of the State. It only requires that two-thirds should concur in any enactment to give it the force and validity of a law. The same two-thirds can remove the judges by impeachment who should declare it unconstitutional. I have thrown out these few observations, to manifest how clearly it was the intention of the framers of the Constitution, that the supreme power of the State should be vested in the Legislature, and that the judges, in expounding Legislative enactments, will see that whatever might be their construction of the Constitution, the people have vested their Representatives with a

supervisory power over them, to correct them, or to remove the judges, if they deem it expedient.

The bill being now signed by the Governor and returned to the House in which it originated, the chairman of the comparing committee lodges it in the office of the Secretary of the commonwealth, where it remains. The laws are printed every session, and the copy is taken from the act, thus placed in the archives of the State. The practice is the same as to a resolution. Governor Shulze had a *resolution*, fixing the residence of the Attorney-general at Harrisburg, at the session of 1826–7, presented to him for his signature, but it not having been presented ten days *before* the rising of the legislature, he detained it, and sent it back signed, within the *three* first days of the next session; if he had not returned it, within the three days, it would have been valid without his approval.

Of Privileged Questions.

17. No business regularly before the House shall be interrupted except by a motion

For adjournment,

For the previous question, namely, "*shall the main question be now put?*"

For postponement,

For commitment,

Or for amendment.

18. A motion for adjournment shall always be in order, and shall be decided without debate, except that it cannot be received when the House is voting on another question, nor while a member is addressing the House.

The Previous Question.

A motion for the previous question shall preclude amendment and discussion of the original subject; but the previous question shall not be moved by less than twelve members rising for that purpose, and shall be decided without debate.

A resolution had passed the House of Representatives relative to the employment of counsel to attend to a certain suit in the United States Court, in which the state was interested. The resolution was presented to the Senate, where it was so amended as to direct that the Attorney-general should thereafter reside at Harrisburg, that he might give the necessary information to the different de-

partments, and generally to superitend all the law interests of the commonwealth. This amendment was sent to the House of Representatives for concurrence, on the afternoon of the last day of the session, when motions to "non-concur," "amend," "postpone for the present" "postpone indefinitely," were severally made; and it being discovered, that if any further time should be allowed to the opposition, the amendment from the Senate would not be concurred in, as it was then late in the afternoon. The previous question was therefore called, which was done by the following persons rising and requiring the question, viz: Messrs. Burden, Pearson, Lawson, J. R. C. Smith, Bonner, Dunlap, Woolverton, Shannon, Cunningham, P. Stephens, Matheson, and Overholzer.

The clerk having taken down the names of the members who remained standing for that purpose, and having reported to the Speaker, that twelve, the proper number according to the rule, were up, the Speaker stated the question: "Shall the main question be *now* put?" And the yeas and nays being called, it appeared there were 33 yeas, 21 nays. So the question was determined in the

affirmative. When the previous question was called, the motion *then* before the chair was: "To postpone the question of concurring in the amendment made to the resolution by the Senate, indefinitely." It having, however, been decided, that the main question should be put, and the "main question" being "to concur in the amendment from the Senate," the Speaker asked: "Will the house concur in the said amendment?" And the yeas and nays being required, were as follows—for concurring, 32; against concurring, 24. So the amendment was concurred in. This is a brief, but perfect outline of the proceedings upon a call for the previous question.

Of Postponement.

A motion for postponement shall preclude commitment. A motion for commitment shall preclude amendment or decision on the original subject. A motion may be made to postpone a question "for the present." This motion may be amended by fixing a definite day, either within or beyond the session; or it may be amended so as to read to "postpone indefinitely." Where different days are men-

tioned, the rule is, that the question shall be first put on the most distant day.

Sometimes bills are indefinitely postponed, together with amendments. At the session of the Legislature of 1826–27, a bill passed the Senate relative to the Pilots of the Bay and River Delaware—and in the House, the bill was agreed to with a *verbal* amendment.

The bill with the amendment was returned to the Senate for concurrence, and a motion was made to postpone the amendment together with the bill indefinitely. It was contended, that as the house had agreed to the Senate bill with an amendment, all that the Senate could do, was to "concur" or "non-concur" in the amendment—but that they could not touch the bill itself. The amendment, together with the bill, was however indefinitely postponed.

Three or four instances were shown, in which the Legislature had postponed bills similarly situated, and the Senate relied upon the precedents to sustain them. It is now too late to disturb the practice, but certainly it is not based upon any thing like system or regularity in Legislative proceedings.

Of Committee of the Whole.

Rule 23. The rules and proceedings observed in the house, shall be observed as far as they are practicable in committee of the whole, except that a member may speak oftener than twice on the subject; nor can a motion for the previous question be made therein.

In addition to the right which a member has to speak as often as he pleases, in committee of the whole, there are other advantages derived from it. Amendments made in the committee are not inserted upon the journals, which not only saves a great deal of printing, but much labour to the clerk in journalizing. It is true, whatever amendments are made in committee may be stricken out, on second reading, in the house, or any sections that have been stricken out in committee, may be moved as amendments on a second reading in the house; and the amendments that may be offered, whether they carry or are lost, must appear on the journals, unless dispensed with by motion, and that motion must carry *unanimously*. These efforts to amend upon a second reading, are, however, never made, unless the

members making them, believe that they ought to appear on record for their own justification. In general, however, the great body of amendments made in committee are not offered in the house, upon a second reading.

A quorum in committee is the same as a quorum in the house. It sometimes happens in evening sessions, towards the time of adjournment, that when a bill is in committee, a quorum of members is not present. When the chairman is notified of this fact, or by counting discovers the deficiency, he stops further proceedings, observing, "there is not a quorum present;" and if the absent members do not appear, the committee rises, and the chairman reports the fact to the house. The Speaker immediately sends the sergeant-at-arms in search of the absentees, and a quorum is usually obtained; if not, the house adjourns. If, however, in the morning or afternoon a quorum should not be present at the hour of meeting, the Speaker takes the chair, and sends officers of the house for the members, who immediately attend, and the business proceeds.

The yeas and nays can only be *called in the House.* Sometimes the secretary of the

commonwealth or the clerk of the Senate arrives at the bar to present messages, when the house is sitting in committee. In that case the Speaker resumes the chair for a short time, and receives the messages. He then retires, and the chairman takes the chair and proceeds with the business before the committee.

Rule 29. All bills shall be introduced, upon the report of committees: standing committees may report by bill: select committees may report by bill, on leave of the house. Members asking leave to bring in a bill, shall give one day's notice, stating the object of the bill, and upon leave granted, a committee shall be appointed to prepare and bring in a bill accordingly.

The old Rule of allowing any member to read in his place, and by permission of the house to present to the chair, a bill, which was then to be proceeded in as if reported by a committee, was a very good one, and well calculated, particularly on the eve of the session, to free legislative proceedings from useless embarrassment. The 29th rule has been copied from the rules of the House of Representatives of the United States; but I feel

well assured, that experience will prove that the former one was most convenient for a *state* legislature. The Senate rule permitting members to read bills in their places, and on leave given to present them to the chair, to be proceeded on as if reported by a committee, remains unchanged.

Rule 31. Communications from the Senate to the house shall be read, and information shall be given to the Senate whenever any proposition coming from that body shall be concurred in.

When a bill is negatived by either house, it is not the practice for the clerks to inform the house in which it originated, that it has been rejected. The copy of the journal, furnished by the sergeant-at-arms of one house to the sergeant-at-arms of the other, by whom it is placed on the tables of the members, is considered a sufficient notification upon the subject.

Rule 32. When the names of the members shall be called, it shall be done in alphabetical order, except Mr. Speaker, who shall be called last.

By the 9th rule of the House of Representatives, adopted during the session of 1792,

it was directed, that "The Speaker's vote should only be taken when the votes were *equal.*"

The 9th rule of the House of Representatives of the United States directs, that "In all cases of *ballot* by the house, the Speaker *shall* vote: in other cases he shall *not* vote, unless the house be equally divided, or unless his vote, if given to the minority, will make the division equal; and in case of such equal division, the question shall be lost." During the late session of Congress, "The Previous Question" having been called, the Speaker rose to count the votes, agreeably to the 35th rule, which requires a *majority* to sustain it, and found that the house was equally divided. In this instance the Speaker gave his vote, to *second* the motion for the call.

By the fourth section of the first article of the constitution, it is provided, that the Vice President of the United States shall be President of the Senate, but shall have no vote unless equally divided.

The reason why he is precluded from voting, unless in the case mentioned, is because he is not a Senator, and it would give the state from which he came a preference, by allowing it three votes. The present rule of

the House of Representatives of this state, is the proper one. It directs the Speaker to vote last. Where a county, as in the case of Greene, has but one member, and that member should be elected Speaker, as in the case of the Hon. Reese Hill, it would be gross injustice to the people of that county to prevent their representative from voting, by electing him to preside over the deliberations of the house.

Rule 37. On the call of a member for a bill or other subject, on the table of the house, the question shall be decided without debate.

This is a very beneficial rule, if the Speaker sets his face against all evasions, and impartially administers it. If a member is very anxious to get a bill before the house, he should, when the house is not in session, give the members his reasons for wishing it to be taken up. A whole day, if the rule is not strictly adhered to, may be wasted in discussing the propriety of taking up a bill; and perhaps after all this loss of time, the house may refuse to proceed to the consideration of it. This rule was devised to interrupt prefatory remarks, for if a discussion must be heard, it is most convenient to hear it on the

bill itself, and not on the propriety of going into a consideration of it. To enforce the rule properly, it is to be done as soon as a member commences with his reasons in favor of his motion, by the Speaker's remarking, "No observations can be allowed on the question of *proceeding* to the consideration of a bill."

Of Rules.

Rule 39.—No rule shall be altered or dispensed with, but by two-thirds of the members present.

There is no rule more frequently called into requisition than the 39th, towards the rising of the legislature. By this rule, which dispenses so frequently with other rules, bills have passed through their several readings in the course of a few minutes. The process is as follows:

Page 773.—Agreeably to order, the house resolved itself into a committee of the whole, Mr. Ramsey in the chair, on the bill from the Senate, No. 574, entitled "An act for the relief of Wm. Streper, a soldier of the revolution;" and after some time, the Speaker resumed the chair, and the chairman reported the bill without amendment.

As soon as this report was made, it was moved and seconded to proceed to the second reading and consideration of the bill, which being agreed to, and the several sections, together with the title, having been read and agreed to, the Speaker rises and says: "This bill having been read the second time, considered and agreed to, the question will be on *preparing* it for the third reading." He puts the question: "Will the house agree to prepare the bill for a third reading?" which having carried, he says: "The bill will be prepared for the third reading." As soon as he has announced that it will be prepared, a member moves, that "The rule which prohibits bills from being read twice on the same day, be dispensed with so far as relates to this bill, and that it now be read the third time." If no objections are made, he says: "The motion is agreed to." The clerk then reads the bill; and when he has finished, the Speaker says: "The bill is before the house," and rises and states the question thus: "This bill originated in the Senate, and has now been read the third time. The question will be on its final passage." "Will the house agree to the passage of the bill?" He puts

the question in this shape, as the bill is an important one, and he wishes to economise the time of the house, as motions after this manner are always made about the time of the adjournment of the legislature.

Sometimes the motion to proceed to the second reading is put with this addition—"that it be read *by its title.*" In this case, the sections are not read, but merely the *title;* when the Speaker says: "The bill has been *read* a second time, considered and agreed to. The question is on *preparing* the bill for a third reading."

Bills from the Senate are not transcribed by the Clerk of the House, for they are transcribed before they are transmitted; hence the bill is said to be "prepared." It is not unusual, when the motion is made to dispense with the rule, which prohibits bills from being read twice on the same day, and that it be read a third time, to add "*by its title.*" If this motion is agreed to, the clerk reads the *title,* and the Speaker announces, that "the bill is before the house, and that the question will be on its final passage." This motion prevents the Speaker from reading over the printed bill to detect errors while the clerk is

reading the enrolled copy, and of course is never resorted to, except in cases of necessity. When, however, the clerk has doubts about the correctness of the copy, he informs the Speaker, and the motion to read *by the title* is withdrawn, and the bill is read throughout. It used frequently to occur, that a motion was made to dispense with going into committee of the whole; but that motion is not so beneficial as to go into committee, and there make the necessary amendments; as this keeps the journal from being loaded with amendments —whereas if the motion to dispense with going into committee is carried, then, if any amendments are made upon a second reading, they must appear upon the journal, unless unanimously dispensed with.

Contested Elections.

Constitution, Article 1st, Sect. 12. Contested elections shall be determined by a committee, to be selected, formed and regulated in such manner as shall be directed by law. Upon the petition of at least fifty qualified electors of this State, (see the act of 6th March 1793 and its supplements,) addressed to the Legislature, complaining of an undue election

or false return of a person elected Governor, or upon the petition of twenty qualified electors of the proper district, presented to the Senate, complaining of an undue election or false return of a Senator, or upon the petition of twenty proper city or county qualified electors, complaining of an undue election or false return of a member of the House of Representatives, a committee is directed to be selected and qualified agreeably to the provisions of the act of the 29th September, 1791, Purdon 222, who are to try the matter of the petition and to give a true judgment thereon according to the evidence. This committee is vested with power to send for persons, papers and records, to examine all witnesses who may come before them upon oath or affirmation, which the chairman or clerk of the committee may administer in their presence, and any person guilty of taking a false oath or affirmation before them, or of procuring another so to do, shall upon conviction, be liable to the same punishment as persons convicted of perjury are liable to by the laws of this commonwealth. By the act referred to, no petition can be received by the Legislature, unless the same shall be presented within *twenty*

days after the meeting of the General Assembly.

By a supplementary act passed the 6th of March 1793, relative to contested elections, it is further declared that no order shall be taken on any petition, unless the same is accompanied by a certificate from the Treasurer, Prothonatory, or any of the commissioners of the county or counties in which the petitioners reside, setting forth that the said petitioners or as many of them as are required by the law to which this section is a supplement, were *at the time* of signing such petition, *duly qualified electors*.

The committee is also clothed with power not only to determine on the validity of contested elections, but to decide which of the candidates has the greatest number of legal votes, which candidate shall thereupon be entitled to the seat or office, which he had been voted for at such election.

By the act of the 23d of March 1818, another supplement to the original act upon contested elections, it was deemed advisable by the Legislature to enact—that no order shall be taken on any petition addressed to the Legislature, complaining of the undue election

or false return of a person elected Governor, or a member of either branch of the Legislature, unless presented within *five days after* the next meeting of the Legislature, nor unless *five* or more qualified electors signing such petition shall take and subscribe *an oath* or *affirmation before some judge or justice of the peace*, in and for the county or counties in which they reside, a copy whereof shall accompany and be annexed to such petition, that the *facts* stated in such petition are true to the best of their knowledge and belief. It was further added, that if the facts stated in the petition or petitions shall not be established, then the county or counties in which the petitioners reside shall pay the costs; but if the fact or facts stated in the petition or petitions shall be established, then the county or counties in which the facts complained of took place, shall *pay* the *costs*.

The restriction as to *five* days, grew out of the trials to which the legislature was exposed a few years ago, when *contesting* was likely to become too troublesome. To throw some barrier in the way of the impetuous zeal of the times, an oath or affirmation, signed by at least five qualified electors, and

presented within five days after the session opened, were required. Since that period, no contest within my recollection, has proved successful. Perhaps no policy is more sound than that of compelling parties to present their exceptions to a member's right to a seat, as soon as the session commences. Otherwise the returned member has his mind so much disturbed about the inquiry, that he cannot be very serviceable to his county. He more or less has to pay court to all, and is frequently afraid to give a free and independent vote, lest he may offend some of the individuals who may have the trial of his case. Statutes of limitation therefore, cannot any where be more useful than where they make a Representative free from hope or fear in the vote he may have to pronounce upon the great interests of the state. It is not so important *who* the Representative is, as that he should have no improper bias to warp his judgment, from a conscientious discharge of his duties.

Nomination and Election of State Treasurer.

Constitution, Art. 6, Sect. 5. "The State Treasurer shall be appointed annually by the *joint* vote of the members of both houses. The

following is the mode adopted. Each house appoints a member to act as teller. And the two houses assemble in convention on the second Tuesday in January, at 12 o'clock, in the chamber of the House of Representatives. The Speakers alternately preside. The hour of twelve having nearly arrived, a committee is appointed by the House of Representatives to wait upon the Senate, and inform that body that the House of Representatives is ready to proceed to the election of State Treasurer, and that they are deputed to introduce the Senators into the Representative chamber. The Senate immediately adjourn, and repair to the house accompanied by the committee. As soon as the Senators arrive at the bar of the house, the Speaker of the Representative chamber rises and says: "The Speaker and members of the Senate." All the members of the house immediately rise. The Senators advance, uncovered, to that part of the chamber where seats are prepared for their reception. When they are seated, the Speaker and members of the House resume their seats. Both bodies having now jointly assembled, the Speaker of the Senate, if it should be his turn to preside, rising, says: "This is the day provided by the constitu-

tion and laws of the commonwealth to proceed to the choice of a State Treasurer." He then asks, "Will the convention proceed to the election?" Which being agreed to, he says: "The clerk of the Senate will call over the names of the members of the Senate, and when he has finished, the clerk of the House of Representatives will call over the names of the members of the House of Representatives." The clerk of the Senate commences. The members, as their names are called state for whom they vote. The tellers repeat the vote. Having called over the names of the Senators and Representatives, the tellers add up the votes and make report to the President of the convention, viz. that Mr. —— has — votes. The President rises and repeats the report with the addition, that as Mr. —— has a majority of the votes of the convention, he is therefore elected State Treasurer for the ensuing year. There being no further business to be transacted in convention, some one of the members moves that the convention adjourn, which is agreed to. [As the Speaker of the senate withdraws, he politely takes leave of the Speaker of the house.]

The Senators now retire to their chamber,

and the Speaker having resumed his chair, the teller on the part of the Senate, makes report: "That the members of the Senate and House of Representatives assembled in joint convention, and elected ——— State Treasurer;" and hands to the clerk the result of the election, which is entered upon the journals. In the House of Representatives a similar report is made, and ordered to be entered upon the journal thereof.

Of the nomination and election of United States' Senator.

Constitution, Art. I. sect. 4. The times, places and manner of holding elections for Senators shall be prescribed in each state, by the legislature thereof.

"SECT. I. Whenever a vacancy is about to take place in the representation of this state, in the Senate of the United States, in consequence of the expiration of the time for which a Senator was chosen, the legislature shall proceed to supply such vacancy in the following manner, *to wit:* The members of both houses shall assemble in the chamber of the house of representatives, at the hour of twelve, on the second Tuesday in December, preced-

ing the month of March, in any year, wherein a vacancy shall happen by the expiration of the constitutional term, for which such senator was elected, and then and there elect a senator or senators, as the case may be, to represent this state in the senate of the United States, which election shall be conducted in the following manner, *viz.* Before the time of meeting, each house shall appoint one teller, and nominate one or more candidate or candidates for senator, and two days previously to the said meeting, communicate to each other the names of the persons so by them respectively appointed and nominated; at the meeting, the Speaker of the Senate, in his absence, the Speaker of the House of Representatives shall preside; the names of the persons voted for, and the members voting, shall be entered in writing by the tellers, who shall report to the president the number of votes given for each candidate: if neither of the candidates shall have a majority of votes of the whole number of the members present, a second poll shall be taken, and so from time to time, until some one of the candidates shall have a majority of votes of the whole number of the members present: if the election shall

not have been completed at the first meeting, the president shall adjourn to such time as a majority of the members then present shall agree, and so from time to time, until the election shall have been finally closed; whereupon the president shall announce the person having a majority of votes of the whole number of members present, to be duly elected a senator to represent this state in the senate of the United States: and the president shall, in the presence of the members of both houses, sign four several certificates of the election, attested by the tellers; one of which certificates shall be transmitted to the president of the senate of the United States, one to the person so elected, and the remaining two shall be preserved among the records, and entered at length on the journals of the senate, and on the journals of the house of representatives: and whenever a vacancy by death, resignation or otherwise, shall happen in the representation of the state, in the senate of the United States, after the said second Tuesday in December, and during the session of the legislature, then and in such case, the legislature shall, within eight days after knowing or being informed of such vacancy, proceed to fill

the same, in the manner herein before prescribed."—*Purdon*, 227–8.

Of the Opening and Publishing the returns of the Election of Governor.

The two Houses appoint joint committees to fix upon the time and place of opening and publishing the returns. The returns are always opened and read in the chamber of the House of Representatives, prior to the 3d Tuesday in December.

The Speaker of the Senate and House of Representatives sign a certificate, declaring that upon opening and counting the votes it was ascertained that —— was duly elected Governor. This certificate is directed to be deposited in the office of the Secretary of the Commonwealth, and there recorded. And a duplicate attested by both Speakers to be transmitted to the Governor elect. Twelve o'clock of the 3d Tuesday in December, is the time fixed upon for the inauguration of the Governor. The Senators are introduced into the Representative Chamber to hear the returns read and added up, in the same manner as described in the election of State Treasurer or a United States' Senator. The

returns having been read, and ascertained to be in favour of —— for Governor, the houses appoint a joint committee, who wait upon and attend him to and from the General Assembly. The Speaker of the Senate rises, and reads the certificate of the election, signed by both Speakers. The Governor then rises, and the Speaker administers to him the following qualification: "You do swear that you will support the Constitution of the United States, so help you God." "You do also swear that you will support the Constitution of the State of Pennsylvania, and that you will discharge your duties as Governor, with fidelity, so help you God." As to affirmations or swearing by the uplifted hand, see page 108.

Vacancies in either House.

"SECT. XV. And whereas the nineteenth section of the Constitution of this State provides, that when vacancies happen in either House, the Speaker shall issue writs of election to fill up such vacancies: Therefore, *Be it enacted*, That when in consequence of any vacancy by death, resignation, or otherwise, in the House of Representatives, the Speaker of the House of Representatives shall issue

his writ, he shall therein command the sheriff of the proper county, or other person to whom such writ may be directed, on a day certain, and therein particularly expressed, to hold an election to supply such vacancy; and when in consequence of any vacancy in the Senate, by death, resignation, or otherwise, the Speaker of the Senate shall issue his writ to the Sheriff or Sheriffs of the county or counties of which the district is composed, or other person or persons to whom such writ may be directed, he shall therein command such person or persons on a day certain, and therein particularly expressed, to hold an election to supply such vacancy; and when such vacancy shall happen in either House during the session of the General Assembly, or when the same shall be required by their own adjournment, or by the Governor, to meet at some time previous to the next succeeding general election, the Speaker of the House wherein such vacancy shall happen, shall appoint a time, as early as may be convenient, for holding an election to fill the said vacancy; but if such writ shall be issued during the recess of the general assembly, and when the same shall not be required to meet before the next suc-

ceeding general election, the Speaker issuing such writ shall direct the election to be held at the time appointed for holding the general election: *Provided always*, That if after issuing of such last mentioned writ, the governor shall at any time issue his proclamation for convening the General Assembly, the sheriff, or other person to whom the said writ shall be directed, shall in that case proceed to execute the same, by holding the election within thirty days after the date of such proclamation: *And provided further*, That such writ so issued by the Speaker of the House of Representatives and Senate, respectively, shall be delivered to the sheriff, or other person to whom the same may be directed, at least fifteen days before the day appoined for such election, who shall forthwith give due and public notice thereof throughout the county, at least ten days before such election, and shall send a copy thereof to each of the judges, or to one of the judges of each district therein, in case such county or counties be divided for the purposes of election; and such elections shall be holden and conducted in like manner as is herein before directed, and the judges and inspectors chosen for and before

the next preceding general election, shall attend at, and serve as such, respectively, at such occasional elections.—*Purdon*, 216.*

Electors of President, in certain cases, to be chosen by the Legislature.

SECT. III. The electors who shall be chosen as aforesaid, shall at twelve o'clock, on the day which is or may be directed by the congress of the United States, meet at the seat of government of this state, and shall then and there perform the duties enjoined upon them by the constitution and laws of the United States.†

SECT. IV. Each of the said electors shall, before the hour of nine o'clock, A. M. on the day next preceding the day of election of president and vice-president of the United States, give notice to the governor, that he is at the seat of government, and ready to perform the duties of an elector, and it shall be the duty

* But see Supplement passed the 16th of April, 1829, which directs that where the return cannot be made before the rising of the Legislature, the election is postponed till the next general election.

† By an Act of Congress of the 1st March, 1792, that day is the first Wednesday in December: their votes are to be delivered to the President of the Senate of the United States before the first day of January, to be opened in Congress on the second Wednesday in February.

of the governor, on the day of the meeting of the said electors, between the hours of nine and ten o'clock, A. M. to inform the legislature (if in session) who of the electors are at the seat of government, and if by that information, it shall appear that any one or more of the electors be absent from the seat of government, the legislature shall forthwith proceed to choose by a joint vote, a person or persons to fill up such vacancies as may have occurred by the non-attendance of one or more of the electors, and immediately after such choice shall have been made by the legislature, the name or names of the person or persons so chosen, shall be transmitted to the governor, whose duty it shall be forthwith to cause a notification of his or their election to be delivered in writing to each and every of the electors last chosen as aforesaid; and the said person or persons so notified, and not the person or persons in whose places he or they shall be chosen as aforesaid, shall be electors, and shall meet on the same day, together with the other electors, and perform the duties enjoined on them by the constitution and laws of the United States." *Purdon*, 221.

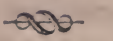
RULES

OF

THE SENATE

OF THE

COMMONWEALTH OF PENNSYLVANIA.



The Rules of the Senate and House of Representatives are so nearly alike, that it was unnecessary to make separate notes upon them. But I nevertheless believe, that I have said every thing, upon the rules of the house that can elucidate those of the Senate. There is only one rule of the Senate that requires particular notice, and that is because there is no rule of the kind for the government of the House of Representatives. It is the 14th, and is in the following words: "No amendment shall be received by the Speaker, which destroys the general sense of the original section, clause or paragraph." In the other house, amendments of this character, are left with the members to reject by

voting against them, but not to the Speaker's discretion. If an amendment be proposed, inconsistent with one already agreed to, it is a fit ground for rejection by the House, but not within the *competence* of the Speaker to *suppress*, as if it were against order. For were he permitted to draw questions of consistence within the vortex of order, he might *usurp* a *negative* on important modifications, and suppress instead of subserve the legislative will. Amendments may be made so as totally to alter the nature of the propotion: and it is a way of getting rid of a proposition by making it bear a sense different from what was intended by the movers, so that they vote against it themselves. 2 Hats. 79. 4, 82, 84. A new bill may be engrafted by way of amendment on the words, "Be it enacted," &c. 1 Grey, 190, 192.

I. The Speaker shall take the chair each day, at the hour to which the Senate stands adjourned, when he shall call the members to order, and on the appearance of a quorum shall cause the journal of the preceding day to be read, which the Senate shall have power then to correct.

II. The order to be observed in taking up business shall be as follows:

1. The asking of leave of absence.
2. The receiving and referring of petitions, memorials, remonstrances, letters and documents; and on motion, referring such as have been previously presented, and appointing additional members on committees.
3. The receiving of reports of committees.
4. The reading of bills in their places by members, who, on obtaining leave of the Senate, may present the same to the chair, when they shall be proceeded on, as if reported by a committee.
5. The reading of bills the third time.
6. The considering of reports and resolutions previously presented, and the referring of items of unfinished business.
7. The offering of original resolutions.
8. The considering of bills in the following order:

First. Those in which the Senate has made progress on a second reading.

Second. Those reported by a committee of the whole.

Third. Those in which the committee of the whole has made some progress, and has had leave to sit again.

9. The considering of *the orders of the day.*

10. The disposing of bills upon which no order has been taken, each of which shall be assigned as the order of some particular day, unless a recommitment be directed.

III. It shall be the duty of the Speaker to preserve order, prevent personal reflections, confine members in debate to the question, and when two or more members rise at the same time, decide who shall be first heard; but an appeal in all such cases shall lie to the Senate, and a member called to order, may extenuate or justify.

IV. Members speaking shall address the Speaker, and when presenting a paper, shall first state its import. Members shall not speak more than twice on any question, without permission of the Senate, nor be interrupted when speaking, except by a call to order by the Speaker, or by a member through the Speaker, or by a member to explain, or by a call for the previous question.

V. When a motion is made and seconded, it shall, before debate, be stated by the Speaker. Every motion shall be reduced to writing, if the Speaker or any member require it; but a motion may be withdrawn by the member making or seconding it, before amendment, postponement, an order to lie on the table, or decision.

VI. Every motion shall be entered on the journal, together with the names of the members making and seconding it.

VII. A question regularly before the Senate, can be interrupted only by a call for the previous question, for amendment, postponement, commitment, or adjournment.

VIII. A motion for adjournment shall always be in order, and the question taken without debate.

IX. The motion for the previous question, postponement or commitment, shall preclude amendment and debate on the original subject. The previous question shall not be moved by less than four members.

X. On all questions, the Speaker shall vote last.

XI. Members in the majority only, or

where the Senate has been equally divided, those who voted in the negative, shall move the reconsideration of any question or vote which may have been determined, but no motion for reconsideration shall be received after the expiration of six days, exclusive of Sundays, from such determination.

XII. Every bill shall receive three readings previous to its being passed, which readings shall be on different days.

XIII. No bill shall be amended on the first reading.

XIV. No amendment shall be received by the Speaker, which destroys the general sense of the original section, clause, or paragraph.

XV. No debate shall be allowed on questions of order, unless there be an appeal, or reference by the Speaker to the Senate.

XVI. On filling up blanks, the question shall first be taken on the largest sum, greatest number, and most distant day.

XVII. All bills shall be considered by a committee of the whole.

XVIII. All committees shall be appointed by the Speaker, unless otherwise ordered by the Senate.

XIX. Every member of a committee shall attend the call of the chairman, who shall be the first named person on such committee; and in case of his neglect to call the committee together, or in case of his absence by sickness or other cause, the committee shall attend the call of the next person named on the committee.

XX. The rules and proceedings observed in the Senate, shall be observed, as far as they are applicable, in the committee of the whole.

XXI. No member shall absent himself without leave of the Senate first obtained, unless prevented from attending by sickness or other sufficient cause.

XXII. The files of the Senate may be inspected by the members, but no paper shall be withdrawn therefrom, without the consent of the Senate.

XXIII. No person shall be admitted within the bar of the Senate during its sessions, except the members and officers of the two branches of the Legislature, the Governor and heads of department; nor shall any person be admitted within the lobby of the Senate

chamber, except such as shall be invited by a member of the Senate.

XXIV. The consent of two-thirds of the members present shall be necessary to dispense with any rule of the Senate.

OF IMPEACHMENTS.

Constitution, Art. IV. "SECT. I. The House of Representatives shall have the sole power of impeaching."

SECT. II. All impeachments shall be tried by the Senate: When sitting for that purpose, the Senators shall be on oath or affirmation. No person shall be convicted without the concurrence of two-thirds of the members present.

"SECT. III. The Governor, and all other civil officers under this commonwealth, shall be liable to impeachment for any misdemeanor in office. But judgment, in such cases, shall not extend further than to removal from office, and disqualification to hold any office of honour, trust, or profit, under this commonwealth: The party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment, and punishment, according to law.

Some few years ago, memorials were presented to the House of Reprepresentatives, complaining of the official conduct

of several president Judges of this commonwealth. These memorials were referred to committees, who were authorised to send for persons and papers, with the view to ascertaining whether the charges were of sufficient importance to warrant the preparing articles of impeachment, to be presented to the Senate. In a number of cases the committees reported in favour of impeaching the judges; and they were put upon their trials at the bar of the Senate sitting as a court of impeachment. That the proceedings of a court of this kind may be fully understood, I have looked into the manner of preparing and presenting articles to the Senate, and the organizing of the court, an outline of which I have thought proper to introduce into this work.

Suppose a petition had been presented to the House of Representatives, complaining of Judge ——'s official conduct. After being read, it would be referred to a committee, who would be authorized to send for persons and papers. If the committee should, upon the examination of the evidence, come to the determination of reporting against the Judge's conduct, they would report: "That they had examined the testimony adduced in support

of the complaint preferred against the Judge, [naming him] from which it appeared that he had neglected to discharge his duties of Judge in the following instances." [Here enumerate the instances.] To the report they would attach the following: "Resolved, That a committee be appointed to prepare articles of impeachment against ———, the president judge of the — judicial district of the commonwealth of Pennsylvania, for misdemeanors in office." If this resolution should be agreed to, a committee is immediately appointed to prepare the articles. In the course of a few days, that committee would report: "That they have prepared articles of impeachment against ——, the president judge of the — judicial district of this state," headed as follows:

ARTICLES

Exhibited by the House of Representatives of the commonwealth of Pennsylvania, in their name and in the name of the people of Pennsylvania, against ——, President Judge of the — judicial district of the commonwealth of Pennsylvania, in support of their impeachment against him for misdemeanors in office:

Article 1, 2, &c.—If these articles of impeachment should be adopted, the Speaker, on motion, appoints usually seven members of the House as a committee to exhibit them to the Senate, and on behalf of the House of Representatives to manage the trial thereof. The articles are signed by the Speaker. And when the committee are ready to present them to the Senate, the House usually resolves itself into committee of the whole, and proceeds to the Senate chamber, to hear them read by their committee. The committee of managers are announced by the Sergeant-at-arms and afterwards by the Speaker of the Senate. The chairman of the managers then says, "That they are appointed to prefer to the Senate articles of accusation and impeachment against —— president judge of the —— judicial district." He then reads the articles. The Speaker continues standing till the chairman of the managers finishes reading them; as soon as he has gone through the articles, the chairman says in behalf of the committee, that they "are ready on the part of the House of Representatives, to support the charges exhibited, at such time and place as the Senate may appoint." He then presents the articles to

the Speaker of the Senate, who addresses the committee as follows:

"Gentlemen of the House of Representatives: The Senate will in due time, give notice to the House of Representatives, of the order taken on the articles of impeachment now exhibited against ——, the President Judge of the —— judicial district of Pennsylvania."— The committee now withdraw, in company with the committee of the whole house, who are or ought to be present, at the presentation of the articles of impeachment. And the Speaker of the House of Representatives having resumed his seat, the chairman of the committee of the whole makes report, and afterwards the committee of managers, detailing all that was done by them, as well as the Senate in relation to the articles. Their report is inserted upon the journal of the House. The Senate now appoint a committee to enquire at what time it will be most convenient and proper for them to proceed to the trial, and having agreed upon the time, they direct their clerk to notify the House of Representatives of the time when they will be ready to proceed, together with the order of proceed-

ings. In the case of Judge Franklin, the following regulations were adopted :

Resolved, That the senate will proceed to the trial of the said impeachment on Friday the 25th March, at 9 o'clock in the forenoon.

Resolved, That the Speaker do issue his summons to the said judge, to appear on the said day, to answer to the articles exhibited against him.

Resolved, That as well the managers of the House of Representatives as the said judge, shall have process for their witnesses, and that the Speaker shall issue such process at the request of the parties.

Resolved, That the court shall be organized and the proceedings be as follows :

1st. That before proceeding to organize the court of impeachment, the following oath or affirmation shall be administered to the Senate, viz. "You do solemnly swear (or affirm) that in all things appertaining to the trial of the impeachment of Walter Franklin, president of the Courts of Common Pleas in the second judicial district, consisting of the counties of Lancaster and York, you will do impartial justice, according to the constitution and laws of the Common-

wealth of Pennsylvania." Which oath or affirmation shall be administered in the manner prescribed by law, on Friday the twenty-fifth instant.

2d. That at nine o'clock in the forenoon of the same day, the trial shall commence, in the Senate chamber, and if the said judge, on being called by the president of the court, shall appear, the articles of impeachment shall be read by the clerk.

3d. The president of the court shall thereupon demand of the said President Judge, what answer he has to make to the said accusation or articles; and such answer or answers shall be entered in the minutes and transactions of the court at large.

4th. The President shall then demand of the managers of the House of Representatives, what replication they have to make to the said answer or answers, which shall likewise be entered at large on the minutes.

5th. The said president shall then demand of both parties, if they are ready to proceed to trial; and if they answer in the affirmative, the trial shall proceed.

6th. A motion to adjourn the court, to a precise time and place, may be made and se-

conded by any two members of the court; and the question shall be put and decided in the usual manner.

7th. All motions made by the parties or their counsel, shall be addressed to the president of the court; and if he shall require it, shall be reduced to writing—All questions to a witness, by any member of the court, shall be put by the president; and if he shall require it, shall be reduced to writing.

8th. Witnesses shall be sworn or affirmed, in the following form, to wit:—"You do swear (or affirm) that the evidence you shall give, in the case now depending between the Commonwealth of Pennsylvania and Walter Franklin, president of the courts of common pleas in the second judicial district, consisting of the counties of Lancaster and York, shall be the truth, the whole truth, and nothing but the truth." Which oath shall be administered by the president of the court; and all witnesses shall be first examined by the party producing them, and then cross-examined in the usual form.

9th. The order of proceedings on the trial shall be as follows:

First—The opening of the accusation by the managers.

Second—The testimony on the part of the commonwealth.

Third—The opening in the behalf of the accused.

Fourth—The testimony on the part of the accused,

Fifth—The argument on the part of the managers.

Sixth—The argument on the part of the accused.

Seventh—The reply on behalf of the managers.

Friday the 25th of March 1825, being the day agreed upon to open the court and commence the trial, the proceedings are as follows: The Speaker, at the hour appointed will adjourn the Senate, and inform the members that the court of impeachment will now be organized. For this purpose he calls one of the Senators to administer to him the requisite qualification, the form of which is prescribed in the order of proceedings, and having taken his oath, pursuant to the direction of the constitution, he directs the clerk to call all the members, alphabetically, who step up to the desk and severally take the necessary oath or affirmation. If any member is desir-

ous of being excused from serving on the court, if he can give a reason sufficient to satisfy the majority of the court, he will be excused. On the trial of Judge Franklin, Mr. Mahon, the late Speaker of the Senate, was excused from serving on account of indisposition, and Mr. Emlen was excused on account of his relationship to the judge. All the members having been sworn or affirmed, except such as may have been excused, and the Sergeant-at-arms having made proclamation that the court is open; the Clerk is directed to give notice to the House of Representatives, that the court of impeachment for the trial of —— president judge of the —— judicial district of Pennsylvania, is ready to proceed to business.

The managers having been previously notified of the day and hour for the assembling of the court, are in a state of readiness. They immediately proceed, accompanied by the committee of the whole house, to the Senate chamber, where the court are sitting. The members of the House are assigned seats.

The court now direct ——, the president judge of the —— judicial district of Pennsylvania, to be called; and on his appearance at the bar, the president directs the Clerk to read the articles of impeachment, prepared

by the House of Representatives, in his hearing. The clerk having read the articles to the Judge, the president of the court of impeachment now asks him, "What answer, if any, he has to make in his behalf, to the articles of impeachment preferred against him?" The Judge in reply, reads his answer, or his counsel reads it for him, he having informed the court that the gentleman appears to assist him in his defence. As soon as the Judge's answer has been read, the president of the court asks the committee of managers in behalf of the House of Representatives, "What reply they have to make to the pleas and answers of the judge?"

It is usual at this time, for the managers to request a day's delay, till they consult with the House, as to the replication that may be thought proper to be made.

The court of impeachment grant the request, and adjourn to meet the next day, at the hour appointed. The Senate then resume their legislative business.

The next morning, the court being opened by proclamation of the proper officer, and the clerk having called over the names of the members—and the president having an-

nounced that the court are ready to proceed, the managers, by their chairman, present the following replication:

"*In the House of Representatives,*

March —, 1825.

"The House of Representatives, in their own name, and in the name of the people of Pennsylvania, reply that the said ——— is guilty of all and every the misdemeanors charged in the several articles in the manner and form as therein set forth; and this they are ready to prove against him, at such convenient time and place as the Senate shall appoint for that purpose.

Signed, —— ——,

Speaker of the House of Representatives.

Attest—F. R. S. Clerk.

Suppose that all the testimony had been heard on both sides, and the last day of the trial had arrived, the President would address the court as follows:

"Gentlemen—You have now heard the witnesses on behalf of the commonwealth and the respondent, president judge of the —— judicial district of Pennsylvania, impeached for misdemeanors in office." The president directs the clerk to read the first article, and

observes, that the members will please, as their names are called, to pronounce their judgment on the following question: "Is the respondent guilty or not guilty of a misdemeanor in office, charged in the first article of impeachment?" Whatever may be the vote, the clerk records it. Thus the president goes through all the articles, taking the vote of every member upon each article. The clerk then hands the votes to the president, who reads it, as follows:

1st. Art. 4 members said guilty—24 said not guilty.

2d. Art. 8 members said guilty—20 said not guilty.

And so on, pronouncing on all the articles.

And as there are not two-thirds of the votes of all the court in favour of any one article, the president rises and says: "As there is not a constitutional majority of votes finding ——— guilty of any one of the articles, it therefore becomes my duty to declare that he stands acquitted of all the articles of impeachment exhibited by the House of Representatives against him. The business of the court being finished, it adjourns *sine die*.

EXECUTIVE DEPARTMENT.

Governor—George Wolf.

Secretary of the Commonwealth—Samuel McKean.

Auditor General—Daniel Sturgeon.

Surveyor General—Jacob Spangler.

Secretary of the Land Office—Samuel Workman.

State Treasurer—Alexander Mahon.

Attorney General—Samuel Douglass.

Clerk of the Senate—Walter S. Franklin.

Assistant Clerk—Lawrence L. Minor.

Clerk of the House of Representatives—Francis R. Shunk.

Assistant Clerk—Thomas J. Gross.

RULES

FOR THE GOVERNMENT

OF THE

SELECT COUNCIL

OF THE

CITY OF PHILADELPHIA.

I. The President, or in his absence, a member chosen to preside during the meeting, shall take the chair as soon as seven members appear; after that no member shall depart, without leave of the President.

II. The Clerk shall call over the names of all the members present in alphabetical order, setting down the names of all the members present, in the minutes.

III. If a quorum do not attend, within one half hour after the time appointed to meet, the members present shall then adjourn, the Clerk inserting their names, on the minutes.

IV. But if a quorum attend, Council shall proceed to business in the following order.

The minutes of the last meeting shall be read, and where necessary, mistakes corrected.

Petitions and other communications to Council shall be presented.

Reports of committees shall be called for,

and order thereon taken, after which, business may be proceeded in, at the pleasure of Council.

V. All questions of order, shall be decided by the President; and in case of an appeal from his decision by any two members, Council shall determine by vote without debate.

VI. The President shall vote on all questions, but not debate thereon, without leave of Council.

VII. The President shall appoint all committees, unless in any particular case, Council shall determine otherwise.

VIII. He shall call special meetings of Council, whenever in his opinion public business may require it, or on the request of two members, but when meetings shall be so called, he shall when he may think it necessary direct the clerk to insert in the notices to the members, the import of the business upon which they are to convene, and all notices shall be served on the day preceding that appointed for the meeting.

IX. Previously to any motion becoming the subject of debate, it shall be seconded, and repeated by the President, and if required by the President or two members it shall be reduced to writing, and no motion shall be withdrawn without the consent of Council.

X. When a member speaks he shall rise and address the President, and he shall not be permitted to speak more than twice, on the same question, without leave granted by Council.

XI. At the desire of any member, the question shall be repeated by the President, or any document or paper read by the Clerk.

XII. In ordinary cases, questions may be determined by the aye or no of the members, or by their rising at the option of the President, and in both cases, the President shall declare the state of the vote, and on the call of any three members, before the final vote is taken on any question, the yeas and nays shall be entered on the minutes.

XIII. On motion, any bill, petition, resolution, report or other paper, that has been read and laid on the table, may be called up for a second reading, and shall then become the subject of discussion, and such order made thereon, as the case may require.

XIV. When a question or subject is under deliberation, no motion shall be admitted, unless to amend, divide, commit or postpone it, but a motion to adjourn, shall be always in order and decided without debate, and no amendment shall be admitted, that shall militate against the spirit or principles of the resolution, or bill under consideration.

XV. Bills shall be introduced, by message from the Common Council, by a member in his place, by a committee appointed to report by bill, and by petitioners on leave. On the second reading of a bill it shall be considered by paragraphs, beginning with the enacting clause, and going through to the end, after which the preamble and title shall be decided

on. The bill shall then be read a third time, and finally passed or rejected; the question on such reading being put by the President, "shall this bill pass?" If the bill is passed it shall be engrossed by the Clerk, read and compared, and sent to the Common Council for concurrence, and no bill shall be finally passed in the same meeting on which it originated or was received, unless by a special order of Council, two-thirds agreeing, it be called up for that purpose and passed.

XVI. A motion to re-consider any former resolution or vote, can only be made or seconded by a member who then voted with the majority, nor then, unless made at or before the next meeting after the decision.

XVII. No rule of Council shall be dispensed with, but with the consent of two-thirds of the members present.

XVIII. Council may resolve itself into a committee of the whole, when the President having appointed a chairman, shall leave the chair and shall possess the same privileges as any other member. Such committee shall observe the rules and forms of proceeding usual in Council, as far as they are applicable, with the exception of the latter part of the tenth rule, which prohibits a member from speaking twice on the same question without leave.

XIX. Every member on a committee, shall attend the call of the chairman, who shall be the first named on the committee. At every stated meeting of Council, committees shall

be called over, and the chairman, or in his absence, any member of the committee, shall if required, assign the reason why the committee have not reported, and all reports shall be in writing, and signed by all the members agreeing thereto.

XX. The Clerk shall keep fair minutes of all the transactions of Council with an index to the same; and present all messages to the Common Council.

XXI. He shall, by the messenger, summon the meetings of Council, by written or printed notices, one day at least previous to the time of meeting.

XXII. When any bill, resolution, or report, is to be printed by an order of Council, the Clerk shall carry this order into execution, and he shall furnish the chairman of committees with copies of resolutions, and when applied to, with such other papers as may be necessary.

XXIII. The Clerk shall keep a book, to be termed the Committee Book, in which he shall enter in columns, under appropriate heads.

The time of the appointments of all committees.

The names of the members of the committees.

A brief title of the subject committed.

The time at which the report is to be made.

The time at which the committee made report or were discharged.

XXIV. He shall also keep a book, in which he shall enter in proper columns,

A brief title of such bills, motions or other papers, as have been read, and laid on the table, at any former meeting, but not yet referred to committees, or otherwise disposed of.

The time of their being first read.

The disposal of these papers.

The time of their disposal.

And shall lay these books before the President at the commencement of every meeting, for the information of Council.

RULES

FOR THE GOVERNMENT

OF

THE COMMON COUNCIL,

OF THE

CITY OF PHILADELPHIA.

I. As soon as a majority of members appear, the President shall take his seat, and call to order: after which no member shall depart without leave of the President.

He shall be judge of order, and his decisions thereon shall be immediately submitted to, unless two members require an appeal to Council; which shall be decided without debate.

He shall vote on all questions, but take no part in debate, without leave of Council.

He shall name all committees, unless Council otherwise determine.

He shall call special meetings of Council, whenever in his opinion public business may require it, or on the request of three members: but when meetings shall be so called, he shall direct the clerk to insert in the notices to the members, the import of the business upon which they are to convene; and such notices shall be served on the day preceding that appointed for the meeting.

II. It shall be the duty of the clerk to keep a docket of all business of Council; with short entries of each transaction thereon; which shall always lie on the table.

He shall also keep fair and regular minutes of the proceedings of Council; read every minute separately as it is made; furnish the chairman of every committee with a copy of the resolution under which they are appointed; and cause a written or printed notice of every meeting of Council to be served by the messenger on each member.

III. After the roll has been called, the order of business shall be:

The minutes of the last preceding meeting, and the docket of unfinished business, shall be read, and, if necessary, corrected as to matters of mistake or form.

Petitions or other communications to Council shall be presented.

Reports of committees shall be called for, and order taken thereon; after which, any business may be proceeded on, at the pleasure of Council.

IV. Every member presenting a paper to the chair, shall first state its general purport; and every member who shall make a motion, shall rise and address the chair.

V. No debate shall be entered into on any motion, unless that motion be seconded, and stated from the chair; and all motions shall, if requested by two members, or by the President, be reduced to writing. No member shall

speak more than twice upon any one question, without leave of Council, and when he does speak, shall rise and address the President.

VI. While a subject is under consideration, no motion shall be made except to amend, divide, commit, or postpone it; but a motion to adjourn shall be always in order, and shall be decided without debate.

VII. No amendment, which tends to destroy the general sense of the clause or motion, shall be admitted.

VIII. Upon the first reading of any report, petition, bill, or other paper, unless upon motion otherwise ordered, it shall, as a matter of course, lie on the table. Upon the second reading, which, upon motion seconded and carried, may be had in the same sitting, order shall be taken thereon as the case may require.

IX. No bill shall be considered as before Council, until it be introduced by message from the Select Council, by a member in his place, by petitioners upon leave given, or by report of a committee. Upon the second reading, the question, after debate, shall be: "Shall this bill be read the third time?" If decided in the negative, the bill shall be lost; if in the affirmative, it shall be so read, considered by paragraphs, beginning with the first enacting clause, and proceeding through the bill, and with the preamble and title. The President shall then take the question: "Shall this bill pass?" If Council determine in the negative, it shall be lost; if in the affirmative,

it shall, with such additions, alterations, or amendments, as have been agreed to, be engrossed by the clerk, read and compared at the table, and sent to the Select Council for their concurrence. But no bill shall be passed at the same sitting at which it is introduced, unless, in passing, two thirds of the members present concur.

X. Upon motion, seconded and carried, Council may resolve itself into a committee of the whole, when the President, having first appointed a chairman, shall leave the chair, and shall possess the same privileges as any other member: but the rules and modes of proceeding usual in Council, shall be observed in such committees, as far as they are applicable; the latter clause of the fifth rule, which prohibits a member from speaking more than twice upon any one question, only excepted.

XI. Every member on a committee shall attend the call of the chairman, who shall be the person first named on the committee. At every stated meeting of Council, committees shall be called over, and the chairman, or in his absence any member of the committee, shall, if required, assign the reason why the committee have not reported.

XII. No motion for re-consideration shall be permitted, unless made and seconded by members who were in the majority on the original question; nor then, unless made at the same meeting as the decision, or at the next meeting after it.

XIII. The yeas and nays shall be entered on the minutes, at the request of any two members.

XIV. No rule of Council shall at any time be dispensed with, unless in doing it two-thirds of the members present concur.

RULES FOR REGULATING

THE INTERCOURSE AND BUSINESS BETWEEN THE

SELECT AND COMMON COUNCILS.

I. The stated meetings of Councils shall be held on the second and fourth Thursdays of each month from October till April, inclusive, at half past six o'clock in the evening; and on the second Thursday of each of the other months, at half past seven o'clock in the evening.

II. When either of the Councils shall adjourn, to meet at any other than the time of stated meeting, or when the President of either Council shall call a special meeting, (which he may do when he judges it expedient) then the other Council shall be summoned to meet at the same time. And in cases of special meetings, called as aforesaid, the notices to the members shall state the particular object, and no other business shall be taken up in either Council, unless two-thirds of the members present shall agree thereto.

III. Messages shall be transmitted, in writing, from one Council to the other, by their respective clerks, introduced and announced by the messenger, and shall be presented to the President.

IV. All proceedings, whether of concurrence, non-concurrence, or amendment, relative to bills, or resolutions requiring the sanction of both Councils, shall be transmitted and re-transmitted, from one Council to the other, until the business shall be finally terminated.

V. When any amendments are proposed by one Council, the other Council may either concur, or non-concur, with the whole, or any part thereof.

VI. When any amendment proposed by one Council is non-concurred in by the other, the first may either recede from such amendment, or adhere thereto.—In the latter case, they shall, by a resolution, propose to the other Council to appoint a joint committee of conference, for the purpose of effecting a union of sentiment in their respective Councils.

VII. The standing joint committees shall be the following:—a Watering Committee, to consist of four members from each Council; a committee of Ways and Means, a committee on the Sinking Fund, a committee on Accounts, a committee on Markets, and a committee on Fire Companies, to consist of three members from each Council; a Paving Committee, to consist of four members from each Council; and a committee on the Library, to consist of two members from each Council. Of the three first mentioned committees, the member first named in the Select

Council shall be chairman; and of the other committees, the member first named in the Common Council. In all other cases, the member first named in the Council where the business originates, shall be the chairman, and shall call the committee together.

VIII. The reports of all joint committees, signed by a majority of the members, shall be made to the Council in which the business referred commenced, and shall be therein acted on; after which, information shall be given to the other Council, accompanied by the report of the committee.

IX. All joint committees, other than those whose services continue during the year, except in particular cases a longer time be allowed, shall report at the third stated meeting, at farthest, after the time of their appointment: and all joint committees, whose services continue during the year, shall meet at least once in every month, and keep minutes of their proceedings, which shall be open to the inspection of any member, at any meeting of the Councils, if required.

X. All resolutions or bills transmitted from one Council to the other, shall be finally disposed of at the third stated meeting, at farthest, after being received.

XI. All matters within the sphere of the authority of Councils, which shall affect the citizens at large, and with which they ought necessarily to be acquainted, must be enacted by ordinance; but matters merely respecting

the duties of city officers, or other objects of a particular nature, may be authorized by resolution.

XII. No ordinance, or part of an ordinance, shall be repealed, altered, or amended, except by ordinance.

XIII. When any ordinance is enacted by Councils, it shall be the duty of the clerk of that Council in which it originated, to have the same examined, recorded, and published, as the law directs, and to preserve four correct copies thereof, two for the use of each Council.

XIV. In joint meetings of the Councils, no business shall be transacted excepting such as shall have been previously agreed upon by concurrent resolution.

XV. Neither Council shall adjourn before half past nine o'clock in the evening, without giving fifteen minutes' notice to the other Council.

SELECT COUNCIL.

President—John M. Scott.

Clerk—Archibald Randall.

William Boyd,	Joshua Lippincott,
Anthony Cuthbert,	Charles Massey,
William J. Duane,	John R. Neff,
Michael Fox,	John M. Scott,
Henry Horn,	Henry Toland,
Thomas Kittera,	Joseph Worrell.

COMMON COUNCIL.

President—James Page.

Clerk—George Fox.

Michael Baker,	John Moss,
Thomas Cave,	Joseph Murray,
Henry L. Coryell,	Daniel Oldenburg,
William Feariss,	James Page,
John M. Hood,	John Patterson,
Michael E. Israel,	Lewis Ryan,
Charles Johnson,	Silas W. Sexton,
Christian Kneass,	Thomas Wallace,
William E. Lehman,	Isaac Wainwright,
William J. Leiper,	John P. Wetherill

Mayor—Benjamin W. Richards.

Recorder—Joseph M'Ilvaine.

RULES

FOR

CONDUCTING BUSINESS

IN THE

SENATE OF THE UNITED STATES.

1. The President having taken the chair, and a quorum being present, the journal of the preceding day shall be read, to the end that any mistake may be corrected that shall be made in the entries.

2. No member shall speak to another, or otherwise interrupt the business of the Senate, or read any newspaper, while the journals or public papers are reading, or when any member is speaking in any debate.

3. Every member, when he speaks, shall address the chair, standing in his place, and when he has finished shall sit down.

4. No member shall speak more than twice, in any one debate, on the same day, without leave of the Senate.

5. When two members rise at the same time, the President shall name the person to speak; but in all cases the member who shall first rise and address the chair, shall speak first.

6. When a member shall be called to order, by the President, or a Senator, he shall sit down; and every question of order shall be decided by the President without debate, subject to an appeal to the Senate; and the President may call for the sense of the Senate on any question of order.

7. If the member be called to order by a Senator, for words spoken, the exceptionable words shall immediately be taken down in writing, that the President may be better enabled to judge of the matter.

8. No member shall absent himself from the service of the Senate, without leave of the Senate first obtain-

ed. And in case a less number than a quorum of the Senate shall convene, they are hereby authorized to send the sergeant-at-arms, or any other person or persons by them authorized, for any or all absent members, as the majority of such members present shall agree, at the expense of such absent members respectively, unless such excuse for non-attendance shall be made, as the Senate, when a quorum is convened, shall judge sufficient; and in that case the expense shall be paid out of the contingent fund. And this rule shall apply as well to the first convention of the Senate at the legal time of meeting, as to each day of the session, after the hour has arrived to which the Senate stood adjourned.

9. No motion shall be debated until the same shall be seconded.

10. When a motion shall be made and seconded, it shall be reduced to writing, if desired by the President, or any member, delivered in at the table, and read, before the same shall be debated.

11. When a question is under debate, no motion shall be received but to adjourn, to lie on the table, to postpone indefinitely, to postpone to a day certain, to commit, or to amend; which several motions shall have precedence in the order they stand arranged, and the motion for adjournment shall always be in order, and be decided without debate.

12. If the question in debate contain several points, any member may have the same divided.

13. In filling up blanks, the largest sum and longest time shall be first put.

14. When the reading of a paper is called for, and the same is objected to by any member, it shall be determined by a vote of the Senate, and without debate.

15. The unfinished business in which the Senate was engaged at the last preceding adjournment, shall have the preference in the special orders of the day.

16. When the yeas and nays shall be called for by one-fifth of the members present, each member called upon shall, unless for special reason he be excused by the Senate, declare openly, and without debate, his

assent or dissent to the question. In taking the yeas and nays, and upon the call of the House, the names of the members shall be taken alphabetically.

17. When the yeas and nays shall be taken upon any question, in pursuance of the above rule, no member shall be permitted, under any circumstances whatever, to vote after the decision is announced from the chair.

18. On a motion made and seconded to shut the doors of the Senate, on the discussion of any business which may, in the opinion of a member, require secrecy, the President shall direct the gallery to be cleared; and, during the discussion of such motion, the doors shall remain shut.

19. No motion shall be deemed in order, to admit any person or persons whatsoever within the doors of the Senate chamber to present any petition, memorial, or address, or to hear any such read.

20. When a question has been once made and carried in the affirmative or negative, it shall be in order for any member of the majority to move for the reconsideration thereof: but no motion for the reconsideration of any vote shall be in order after a bill, resolution, message, report, amendment, or motion, upon which the vote was taken, shall have gone out of the possession of the Senate, announcing their decision: nor shall any motion for reconsideration be in order, unless made on the same day on which the vote was taken, or within the two next days of actual session of the Senate thereafter.

21. When the Senate are equally divided, the Secretary shall take the decision of the President.

22. All questions shall be put by the President of the Senate, either in the presence or absence of the President of the United States, and the Senators shall signify their assent or dissent, by answering, ay or no.

23. The Vice-President, or President of the Senate pro tempore, shall have the right to name a member to perform the duties of the chair; but such substitution shall not extend beyond an adjournment.

24. Before any petition or memorial, addressed to the Senate, shall be received and read at the table,

whether the same shall be introduced by the President or a member, a brief statement of the contents of the petition or memorial shall verbally be made by the introducer.

25. One day's notice, at least, shall be given of an intended motion for leave to bring in a bill; and all bills *reported by a committee*, shall, after the first reading, be printed for the use of the Senate: but no other paper or document shall be printed for the use of the Senate, without special order.

26. Every bill shall receive three readings previous to its being passed; and the President shall give notice at each, whether it be the first, second, or third; which readings shall be on three different days, unless the Senate unanimously direct otherwise. And all resolutions proposing amendments to the Constitution, or to which the approbation and signature of the President may be requisite, or which may grant money out of the contingent, or any other fund, shall be treated, in all respects, in the introduction and form of proceedings on them, in the Senate, in a similar manner with bills: *and all other resolutions shall lie on the table one day for consideration, and also reports of Committees.*

27. No bill shall be committed or amended until it shall have been twice read; after which it may be referred to a committee.

28. All bills on a second reading shall first be considered by the Senate in the same manner as if the Senate were in committee of the whole, before they shall be taken up and proceeded on by the Senate agreeably to the standing rules, unless otherwise ordered. And when the Senate shall consider a treaty, bill, or resolution, as in committee of the whole, the Vice-President, or President pro tempore, may call a member to fill the chair, during the time the Senate shall remain in committee of the whole; and the chairman so called shall, during such time, have the powers of a President pro tempore.

29. The final question, upon the second reading of every bill, resolution, constitutional amendment, or

motion, originating in the Senate, and requiring three readings previous to being passed, shall be, "Whether it shall be engrossed and read a third time?" and no amendment shall be received for discussion at the third reading of any bill, resolution, amendment, or motion, unless by unanimous consent of the members present: but it shall at all times be in order, before the final passage of any such bill, resolution, constitutional amendment, or motion, to move its commitment; and should such commitment take place, and any amendment be reported by the committee, the said bill, resolution, constitutional amendment, or motion, shall be again read a second time, and considered as in committee of the whole and then the aforesaid question shall be again put.

30. The special orders of the day shall not be called by the Chair before one o'clock, unless otherwise directed by the Senate.

31. The titles of bills, and such parts thereof only as shall be affected by proposed amendments, shall be inserted on the journals.

32. The proceedings of the Senate, when not acting as in committee of the whole, shall be entered on the journal as concisely as possible, care being taken to detail a true and accurate account of the proceedings: but every vote of the Senate shall be entered on the journal; and a brief statement of the contents of each petition, memorial, or paper, presented to the Senate, shall also be inserted on the journal.

33. The following Standing Committees, to consist of five members each, shall be appointed at the commencement of each session, with leave to report by bill or otherwise.

A Committee on Foreign Relations.
A Committee on Finance.
A Committee on Commerce.
A Committee on Manufactures.
A Committee on Agriculture.
A Committee on Military Affairs.
A Committee on the Militia.
A Committee on Naval Affairs.
A Committee on Public Lands.

A Committee on Private Land Claims.
A Commttee on Indian Affairs.
A Committee of Claims.
A Committee on the Judiciary.
A Committee on the Post-Office and Post Roads.
A Committee on Pensions.
A Committee on the District of Columbia.

A Committee of three members, whose duty it shall be to audit and control the contingent expenses of the Senate.

And a Committee, consisting of three members, whose duty it shall be to examine all bills, amendments, resolutions, or motions, before they go out of possession of the Senate, and to make report that they are correctly engrossed; which report shall be entered on the journal.

34. In the appointment of the standing committees, the Senate will proceed, by *ballot*, severally, to appoint the chairman of each committee, and then, by one ballot, the other members necessary to complete the same; and a majority of the whole number of votes given shall be necessary to the choice of a chairman *of a standing committee*. All *other* committees shall be appointed by ballot, and a plurality of votes shall make a choice. When any subject or matter shall have been referred to a committee, any other subject or matter of a similar nature may, on motion, be referred to such committee.

35. When motions are made for reference of the same subject to a select committee, and to a standing committee, the question on reference to the standing committee shall be first put.

36. When nominations shall he made in writing by the President of the United States to the Senate, a future day shall be assigned, unless the Senate unanimously direct otherwise, for taking them into consideration. When the President of the United States shall meet the Senate in the Senate Chamber, the President of the Senate shall have a chair on the floor, be considered as the head of the Senate, and his chair shall be assigned to the President of the United States. When the Senate shall be convened by the President of the

United States to any other place, the President of the Senate and Senators shall attend at the place appointed. The Secretary of the Senate shall also attend to take the minutes of the Senate.

37. Whenever a treaty shall be laid before the Senate for ratification, it shall be read a first time for information only; when no motion to reject, ratify, or modify the whole or any part, shall be received. Its second reading shall be for consideration, and on a subsequent day; when it shall be taken up, as in committee of the whole, and every one shall be free to move a question on any particular article, in this form: "Will the Senate advise and consent to the ratification of this article?" or to propose amendments thereto, either by inserting or by leaving out words; in which last case, the question shall be, "Shall these words stand as part of the article?" And in every of the said cases, the concurrence of two-thirds of the Senators present shall be requisite to decide affirmatively. And when through the whole, the proceedings shall be stated to the House, and questions shall be again severally put thereon for confirmation, or new ones proposed requiring, in like manner, a concurrence of two-thirds, for whatever is retained or inserted; the votes so confirmed, shall, by the House, or a committee thereof, be reduced into the form of a ratification, with or without modifications, as may have been decided, and shall be proposed on a subsequent day, when every one shall again be free to move amendments, either by inserting or leaving out words; in which last case, the question shall be, "Shall these words stand as part of the resolution?" And in both cases the concurrence of two-thirds shall be requisite to carry the affirmative, as well as, on the final question, to advise and consent to the ratification in the form agreed to.

38. All confidential communications, made by the President of the United States to the Senate, shall be by the members thereof kept secret; and all treaties which may be laid before the Senate, shall also be kept secret, until the Senate shall, by their resolution, take off the injunction of secrecy.

39. All information or remarks, touching or concerning the character or qualifications of any person nominated by the President to office, shall be kept secret.

40. When acting on confidential or executive business, the Senate shall be cleared of all persons, except the Secretary, the Sergeant-at-Arms, and Door-keeper, or, in his absence, the Assistant Door-keeper.

41. The proceedings of the Senate, when they shall act in their executive capacity, shall be kept in separate and distinct books.

42. Extracts from the Executive Record are not to be furnished but by special order.

43. When an amendment to be proposed to the constitution is under consideration, the concurrence of two-thirds of the members present shall not be requisite to decide any question for amendments, or extending to the merits, being short of the final question

44. When any question may have been decided by the Senate, in which two-thirds of the members present are necessary to carry the affirmative, any member, who votes on that side which prevailed in the question, may be at liberty to move for a re-consideration; and a motion for re-consideration shall be decided by a majority of votes.

45. Messages shall be sent to the House of Representatives by the Secretary, who shall previously endorse the final determination of the Senate thereon.

46. Messengers are introduced in any stage of business, except while a question is putting, while the yeas and nays are calling, or while the ballots are counting.

47. The presiding officer of the Senate shall have the regulation of such parts of the Capitol and of its passages, as are, or may be set apart for the use of the Senate and its officers.

48. The Secretary of the Senate, the Sergeant-at-Arms, and Door-keeper, and the Assistant Door-keeper, shall be chosen on the second Monday of the first session of the 21st Congress, and on the same day of the first session of every succeeding Congress.

JOINT RULES

OF

THE TWO HOUSES.

1. In every case of an amendment of a bill agreed to in one House, and dissented to in the other, if either House shall request a conference, and appoint a Committee for that purpose, and the other House shall also appoint a Committee to confer, such Committees shall, at a convenient hour, to be agreed on by their chairman, meet in the conference chamber, and state to each other verbally, or in writing, as either shall choose, the reasons of their respective Houses, for and against the amendment, and confer freely thereon.

2. When a message shall be sent from the Senate to the House of Representatives, it shall be announced at the door of the House by the Door-keeper, and shall be respectfully communicated to the chair, by the person by whom it may be sent.

3. The same ceremony shall be observed, when a message shall be sent from the House of Representatives to the Senate.

4. Messages shall be sent by such persons, as a sense of propriety in each House may determine to be proper.

5. While bills are on their passage between the two Houses, they shall be on paper, and under the signature of the Secretary or Clerk of each House, respectively.

6. After a bill shall have passed both Houses it shall be duly enrolled on parchment, by the Clerk of the House of Representatives, or the Secretary of the Senate, as the bill may have originated in the one or the other House, before it shall be presented to the President of the United States.

7. When bills are enrolled, they shall be examined by a Joint Committee of two from the Senate, and two from the House of Representatives, appointed as a

Standing Committee for that purpose, who shall carefully compare the enrolment with the engrossed bills, as passed in the two Houses, and, correcting any errors that may be discovered in the enrolled bills, make their report forthwith to their respective Houses.

8. After examination and report, each bill shall be signed in the respective Houses, first by the Speaker of the House of Representatives, then by the President of the Senate.

9. After a bill shall have been thus signed in each House, it shall be presented by the said Committee to the President of the United States, for his approbation, it being first endorsed on the back of the roll, certifying in which House the same originated; which endorsement shall be signed by the Secretary or Clerk (as the case may be) of the House in which the same did originate, and shall be entered on the journal of each House. The said Committee shall report the day of presentation to the President, which time shall also be carefully entered on the journal of each House.

10. All orders, resolutions, and votes, which are to be presented to the President of the United States for his approbation, shall, also, in the same manner, be previously enrolled, examined, and signed, and shall be presented in the same manner, and by the same Committee, as provided in cases of bills.

11. When the Senate and House of Representatives shall judge it proper to make a joint address to the President, it shall be presented to him in his audience chamber, by the President of the Senate, in the presence of the Speaker and both Houses.

12. When a bill or resolution, which shall have passed in one House, is rejected in the other, notice thereof shall be given to the House in which the same shall have passed.

13. When a bill or resolution, which has been passed in one House, shall be rejected in the other, it shall not be brought in during the same session, without a notice of ten days, and leave of two-thirds of that House in which it shall be renewed.

14. Each House shall transmit to the other all papers on which any bill or resolution shall be founded.

15. After each House shall have adhered to their disagreement, a bill or resolution shall be lost.

16. No bill that shall have passed one House, shall be sent for concurrence to the other, on either of the three last days of the session.

17. No bill or resolution, that shall have passed the House of Representatives and the Senate, shall be presented to the President of the United States, for his approbation, on the last day of the session.

STANDING RULES

AND

ORDERS FOR CONDUCTING BUSINESS

IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES.

Touching the duty of the Speaker.

1. He shall take the chair every day precisely at the hour to which the House shall have adjourned on the preceding day; shall immediately call the members to order; and, on the appearance of a quorum, shall cause the journal of the preceding day to be read.

2. He shall preserve order and decorum; may speak to points of order in preference to other members, rising from his seat for that purpose; and shall decide questions of order, subject to an appeal to the House by any two members; on which appeal no member shall speak more than once, unless by leave of the House.

3. He shall rise to put a question, but may state it sitting.

4. Questions shall be distinctly put in this form, to wit: "As many as are of opinion that (as the question may be,) say Ay;" and, after the affirmative voice is expressed, "As many as are of the contrary opinion say No." If the Speaker doubts, or a division be called for, the House shall divide: those in the affirmative of the question shall first rise from their seats, and afterwards those in the negative. If the Speaker still doubts, or a count be required, the Speaker shall name two members, one from each side, to tell the members in the affirmative, which being reported, he shall then name two others, one from each side, to tell those in the negative, which being also reported, he shall rise and state the decision to the House.

5. When any motion or proposition is made, the question, "Will the House now consider it?" shall not

be put, unless it is demanded by some member, or is deemed necessary by the Speaker.

6. The Speaker shall examine and correct the Journal before it is read. He shall have a general direction of the Hall. He shall have the right to name any member to perform the duties of the chair, but such substitution shall not extend beyond an adjournment.

7. All committees shall be appointed by the Speaker, unless otherwise specially directed by the House, in which case they shall be appointed by ballot; and if, upon such ballot, the number required shall not be elected by a majority of the votes given, the House shall proceed to a second ballot, in which a plurality of votes shall prevail; and, in case a greater number than is required to compose or complete a committee shall have an equal number of votes, the House shall proceed to a further ballot or ballots.

8. In all other cases of ballot than for committees, a majority of the votes given shall be necessary to an election; and when there shall not be such a majority on the first ballot, the ballot shall be repeated until a majority be obtained.

9. In all cases of ballot by the House, the Speaker shall vote: in other cases he shall not vote, unless the House be equally divided, or unless his vote, if given to the minority, will make the division equal; and in case of such equal division, the question shall be lost.

10. In all cases where other than members of the House may be eligible to any office by the election of the House, there shall be a previous nomination.

11. All acts, addresses, and joint resolutions, shall be signed by the Speaker; and all writs, warrants, and subpœnas, issued by order of the House, shall be under his hand and seal, attested by the Clerk.

12. In case of any disturbance or disorderly conduct in the galleries or lobby, the Speaker (or Chairman of the Committee of the Whole House) shall have power to order the same to be cleared.

13. No person, except members of the Senate, their Secretary, Heads of Departments, the Treasurer, Comptroller, Register, Auditor, Postmaster General,

President's Secretary, Chaplains to Congress, Judges of the United States, Foreign Ministers and their Secretaries, Officers who, by name, have received, or shall hereafter receive, the thanks of Congress for their gallantry and good conduct displayed in the service of their country, the Commissioners of the Navy Board, Governor, for the time being, of any State or Territory in the Union, who may attend at the seat of the General Government during the sessions of Congress, and who may choose to avail himself of such privilege, such gentlemen as have been heads of departments, or members of either branch of the legislature; and, at the discretion of the Speaker, persons who belong to such legislatures of foreign governments as are in amity with the United States, shall be admitted within the Hall of the House of Representatives.

14. Stenographers, wishing to take down the debates, may be admitted by the Speaker, who shall assign such places to them, on the floor or elsewhere, to effect their object, as shall not interfere with the convenience of the House.

Order of business of the Session.

15. After six days from the commencement of a second or subsequent session of any Congress, all bills, resolutions, and reports, which originated in the House, and at the close of the next preceding session remained undetermined, shall be resumed and acted on, in the same manner as if an adjournment had not taken place.

Order of business of the day.

16. As soon as the Journal is read, the Speaker shall call for petitions from the members of each State, and delegates from each Territory, beginning with Maine; and if, on any day, the whole of the States and Territories shall not be called, the Speaker shall begin on the next day where he left off the previous day. Provided, that, after the first thirty days of the session, petitions shall not be received except on the first day of the meeting of the House in each week.

17. The petitions having been presented and disposed of, reports, first from the standing, and then from the select committees, shall be called for, and disposed of. And not more than one hour in each day shall be devoted to the subject of reports from committees, and resolutions; after which the Speaker shall dispose of the bills, messages, and communications, on his table, and then proceed to call the orders of the day.

18. The business specified in the two preceding rules shall be done at no other part of the day, except by permission of the House.

Local or Private Business.

19. Friday and Saturday in every week shall be set apart for the consideration of private bills and private business, in preference to any other, unless otherwise determined by a majority of the House.

Of Decorum and Debate.

20. When any member is about to speak in debate, or deliver any matter to the House, he shall rise from his seat, and respectfully address himself to "Mr. Speaker," and shall confine himself to the question under debate, and avoid personality.

21. If any member, in speaking, or otherwise, transgress the rules of the House, the Speaker shall, or any member may, call to order; in which case the member so called to order shall immediately sit down, unless permitted to explain, and the House shall, if appealed to, decide on the case, but without debate; if there be no appeal, the decision of the Chair shall be submitted to. If the decision be in favor of the member called to order, he shall be at liberty to proceed; if otherwise, he shall not be permitted to proceed, without leave of the House; and, if the case require it, he shall be liable to the censure of the House.

22. When two or more members happen to rise at once, the Speaker shall name the member who is first to speak.

23. No member shall speak more than twice to the same question, without leave of the House, nor more than once, until every member choosing to speak shall have spoken.

24. If a question depending be lost by adjournment of the House, and revived on the succeeding day, no member, who shall have spoken twice on the preceding day, shall be permitted again to speak without leave.

25. Whilst the Speaker is putting any question, or addressing the House, none shall walk out of, or across, the House; nor, in such case, or when a member is speaking, shall entertain private discourse, nor, whilst a member is speaking, shall pass between him and the chair.

26. No member shall vote on any question in the event of which he is immediately and particularly interested; or in any case where he was not present when the question was put.

27. Upon a division and count of the House on any question, no member without the bar shall be counted.

28. Every member who shall be in the House when the question is put, shall give his vote, unless the House, for special reasons, shall excuse him.

29. When a motion is made and seconded, it shall be stated by the Speaker; or, being in writing, it shall be handed to the Chair, and read aloud by the Clerk before debated.

30. Every motion shall be reduced to writing, if the Speaker or any member desire it.

31. After a motion is stated by the Speaker, or read by the Clerk, it shall be deemed to be in the possession of the House, but may be withdrawn at any time before a decision or amendment.

32. When a question is under debate, no motion shall be received but to adjourn, to lie on the table, for the previous question, to postpone to a day certain, to commit, or amend, to postpone indefinitely; which several motions shall have precedence in the order in which they are arranged: and no motion to postpone to a day certain, to commit, or to postpone indefinitely, being decided, shall be again allowed on the same day, and

at the same stage of the bill or proposition. A motion to strike out the enacting words of a bill shall have precedence of a motion to amend, and, if carried, shall be considered equivalent to its rejection.

33. When a resolution shall be offered, or a motion made to refer any subject, and different committees shall be proposed, the question shall be taken in the following order:

The Committee of the Whole House on the State of the Union; the Committee of the Whole House; a Standing Committee; a Select Committee.

34. A motion to adjourn shall be always in order; that, and the motion to lie on the table, shall be decided without debate.

35. The previous question shall be in this form: "Shall the main question be now put?" It shall only be admitted when demanded by a majority of the members present; and, until it is decided, shall preclude all amendment and further debate of the main question.

36. On a previous question there shall be no debate.

37. When a question is postponed indefinitely, the same shall not be acted upon again during the session.

38. Any member may call for the division of a question, which shall be divided if it comprehends questions so distinct, that, one being taken away, the rest may stand entire for the decision of the House; a motion to strike out and insert shall be deemed indivisible. But a motion to strike out being lost, shall preclude neither amendment nor a motion to strike out and insert.

39. Motions and reports may be committed at the pleasure of the House.

40. No motion or proposition on a subject different from that under consideration, shall be admitted under colour of amendment.

41. When a motion has been once made and carried in the affirmative or negative, it shall be in order for any member of the majority to move for the reconsideration thereof, on the same, or the succeeding day.

42. When the reading of a paper is called for, and the same is objected to by any member, it shall be determined by a vote of the House.

43. The unfinished business in which the House was engaged at the last preceding adjournment, shall have the preference in the orders of the day; and no motion on any other business shall be received, without special leave of the House, until the former is disposed of.

44. Every order, resolution, or vote, to which the concurrence of the Senate shall be necessary, shall be read to the House, and laid on the table, on a day preceding that in which the same shall be moved, unless the House shall otherwise expressly allow.

45. Petitions, memorials, and other papers addressed to the House, shall be presented by the Speaker, or by a member in his place, a brief statement of the contents thereof shall verbally be made by the introducer, and shall not be debated or decided on the day of their being first read, unless where the House shall direct otherwise; but shall lie on the table, to be taken up in the order they were read.

46. A proposition requesting information from the President of the United States, or directing it to be furnished by the Head of either of the Executive Departments, or by the Postmaster General, shall lie on the table one day for consideration, unless otherwise ordered by the unanimous consent of the House; and all such propositions shall be taken up for consideration in the order they were presented, immediately after reports are called for from select committees; and, when adopted, the Clerk shall cause the same to be delivered.

47. Any fifteen members (including the Speaker, if there be one,) shall be authorized to compel the attendance of absent members.

48. Upon calls of the House, or in taking the yeas and nays on any question, the names of the members shall be called alphabetically.

49. Any member may excuse himself from serving on any committee at the time of his appointment, if he is then a member of two other committees.

50. No member shall absent himself from the service of the House unless he have leave, or be sick and unable to attend.

51. Upon the call of the House, the names of the

members shall be called over by the Clerk, and the absentees noted: after which the names of the absentees shall again be called over, the doors shall then be shut, and those for whom no excuse, or insufficient excuses are made, may, by order of those present, if fifteen in number, be taken into custody as they appear, or may be sent for and taken into custody, wherever to be found, by special messengers to be appointed for that purpose.

52. When a member shall be discharged from custody and admitted to his seat, the House shall determine whether such discharge shall be with or without paying fees; and in like manner, whether a delinquent member, taken into custody by a special messenger, shall, or shall not, be liable to defray the expense of such special messenger.

53. A Sergeant-at-Arms shall be appointed, to hold his office during the pleasure of the House, whose duty it shall be to attend the House during its sitting; to execute the commands of the House from time to time; together with all such process, issued by authority thereof as shall be directed to him by the Speaker.

54. The fees of the Sergeant-at-Arms shall be, for every arrest the sum of two dollars; for each day's custody and releasement, one dollar; and for travelling expenses for himself or a special messenger, going and returning, one-tenth of a dollar per mile.

55. Twenty-one standing committees shall be appointed at the commencement of each session, viz:

To consist of seven Members each.

A Committee of Elections.
A Committee of Ways and Means.
A Committee of Claims.
A Committee of Commerce.
A Committee on the Public Lands.
A Committee on the Post Office and Post Roads.
A Committee for the District of Columbia.
A Committee on the Judiciary.
A Committee on Revolutionary Claims.
A Committee on Public Expenditures.

A Committee on Private Land Claims.
A Committee on Manufactures.
A Committee on Agriculture.
A Committee on Indian Affairs.
A Committee on Military Affairs.
A Committee on Naval Affairs.
A Committee on Foreign Affairs.
A Committee on the Territories.
A Committee on Military Pensions.

To consist of three Members each.

A Committee of Revisal and Unfinished Business.
A Committee of Accounts.

56. It shall be the duty of the Committee of Elections to examine and report upon the certificates of election or other credentials of the members returned to serve in this House, and to take into their consideration all such petitions, and other matters touching elections and returns, as shall or may be presented, or come into question, and be referred to them by the House.

57. It shall be the duty of the Committee of Ways and Means to take into consideration all such reports of the Treasury Department, and all such propositions relative to the revenue, as may be referred to them by the House: to inquire into the state of the public debt, or the revenue, and of the expenditures, and to report, from time to time, their opinion thereon; to examine into the state of the several public departments, and particularly into the laws making appropriations of moneys, and to report whether the moneys have been disbursed conformably with such laws; and, also, to report from time to time, such provisions and arrangements as may be necessary to add to the economy of the departments, and the accountability of their officers.

In preparing bills of appropriation for other objects, the Committee of Ways and Means shall not include appropriations for carrying into effect treaties made by the United States; and, where an appropriation bill shall be referred to them, for their consideration, which

contains appropriations for carrying a treaty into effect, and for other objects, they shall propose such amendments as shall prevent appropriations for carrying a treaty into effect being included in the same bill with appropriations for other objects.

58. It shall be the duty of the Committee of Claims to take into consideration all such petitions and matters or things, touching claims and demands on the United States, as shall be presented, or shall, or may come in question, and be referred to them by the House; and to report their opinion thereupon, together with such propositions for relief therein, as to them shall seem expedient.

59. It shall be the duty of the Committee of Commerce to take into consideration all such petitions and matters or things, touching the commerce of the United States, as shall be presented, or shall or may come in question, and be referred to them by the House; and to report, from time to time, their opinion thereon.

60. It shall be the duty of the Committee on the Public Lands to take into consideration all such petitions and matters or things respecting the lands of the United States, as shall be presented, or shall or may come in question, and be referred to them by the House; and to report their opinion thereupon, together with such propositions for relief therein, as to them shall seem expedient.

61. It shall be the duty of the Committee on the Post Office and Post Roads, to take into consideration all such petitions and matters or things touching the Post Office and Post Roads, as shall be presented, or may come in question, and be referred to them by the House; and report their opinion thereupon, together with such propositions relative thereto, as to them shall seem expedient.

62. It shall be the duty of the Committee for the District of Colambia to take into consideration all such petitions and matters or things touching the said District as shall be presented, or shall come in question, and be referred to them by the House; and to report their opinion thereon, together with such propositions relative thereto, as to them shall seem expedient.

63. It shall be the duty of the Committee on the Judiciary to take into consideration all such petitions and matters or things touching judicial proceedings, as shall be presented, or may come in question, and be referred to them by the House; and to report their opinion thereupon, together with such propositions relative thereto as to them shall seem expedient.

64. It shall be the duty of the Committee on Revolutionary Claims to take into consideration all such petitions and matters or things touching claims and demands originating in the Revolutionary war, or arising therefrom, as shall be presented, or shall or may come in question, and be referred to them by the House; and to report their opinion thereupon, together with such propositions for relief therein, as to them shall seem expedient.

65. It shall be the duty of the Committee on Public Expenditures to examine into the state of the several public departments, and particularly into laws making appropriations of moneys, and to report whether the moneys have been disbursed conformably with such laws; and also, to report, from time to time, such provisions and arrangements as may be necessary to add to the economy of the departments, and the accountability of their officers.

66. It shall be the duty of the Committee on Private Land Claims to take into consideration all claims to land which may be referred to them, or shall or may come in question, and to report their opinion thereupon, together with such propositions for relief therein, as to them shall seem expedient.

67. It shall be the duty of the Commitee on Military Affairs to take into consideration all subjects relating to the military establishment and public defence, which may be referred to them by the House, and to report their opinion thereupon; and also, to report, from time to time, such measures as may contribute to economy and accountability in the said establishment.

68. It shall be the duty of the Committee on Naval Affairs to take into consideration all matters which concern the naval establishment, and which shall be refer-

red to them by the House, and report their opinion thereupon; and also, to report, from time to time, such measures as may contribute to economy and accountability in the said establishment.

69. It shall be the duty of the committee on Foreign Affairs to take into consideration all matters which concern the relations of the United States with foreign nations, and which shall be referred to them by the House, and to report their opinion on the same.

70. It shall be the duty of the Committee on the Territories to examine into their legislative, civil, and criminal proceedings, and to devise and report to the House such means as, in their opinion, may be necessary to secure the rights and privileges of residents and non-residents.

71. It shall be the duty of the Committee on Military Pensions to take into consideration all such matters respecting pensions for military service; and also, all such matters respecting invalid pensions, as shall be referred to them by the House.

72. It shall be the duty of the Committee of Revisal and Unfinished Business to examine and report what laws have expired, or are near expiring, and require to be revived or further continued; also, to examine and report, from the Journal of the last session, all such matters as were then depending and undetermined.

73. It shall be the duty of the Committee of Accounts to superintend and control the expenditure of the contingent fund of the House of Representatives, and to audit and settle all accounts which may be charged thereon; and also to audit the accounts of the members for their travel to and from the Seat of Government, and their attendance in the House.

74. Six additional standing committees shall be appointed at the commencement of the first session in each Congress, whose duty shall continue until the first session of the ensuing Congress.

To consist of three members each.

1. A committee on so much of the public accounts and expenditures as relate to the Department of State.

2. A committee on so much of the public accounts and expenditures as relate to the Treasury Department.

3. A committee on so much of the public accounts and expenditures as relate to the Department of War.

4. A committee on so much of the public accounts and expenditures as relate to the Department of the Navy.

5. A committee on so much of the public accounts and expenditures as relate to the Post Office; and,

6. A committee on so much of the public accounts and expenditures as relate to the Public Buildings.

75. It shall be the duty of the said committees to examine into the state of the accounts and expenditures respectively submitted to them, and to inquire and report, particularly—Whether the expenditures of the respective departments are justified by law:

Whether the claims from time to time satisfied and discharged by the respective departments are supported by sufficient vouchers, establishing their justness, both as to their character and amount:

Whether such claims have been discharged out of funds appropriated therefor, and whether all moneys have been disbursed in conformity with appropriation laws; and whether any, and what, provisions are necessary to be adopted, to provide more perfectly for the application of the public moneys, and to secure the Government from demands unjust in their character, or extravagant in their amount.

And it shall be, moreover, the duty of the said committees to report, from time to time, whether any, and what retrenchment can be made in the expenditures of the several departments, without detriment to the public service: whether any, and what, abuses at any time exist in the failure to enforce the payment of moneys which may be due to the United States from public defaulters or others; and to report, from time to time, such provisions and arrangements as may be necessary to add to the economy of the several departments, and the accountability of their officers.

76. The several standing committees of the House shall have leave to report by bill, or otherwise.

77. No committee shall sit during the sitting of the House, without special leave.

78. The Clerk of the House shall take an oath for the true and faithful discharge of the duties of his office, to the best of his knowledge and abilities, and shall be deemed to continue in office until another be appointed.

79. It shall be the duty of the Clerk to make, and cause to be printed and delivered to each member, at the commencement of every session of Congress, a list of the reports which it is the duty of any officer or department of the Government to make to Congress; referring to the act or resolution, and page of the volume of the Laws or Journal in which it may be contained; and placing, under the name of each officer, the list of reports of him to be made, and the time when the report may be expected.

80. It shall be the duty of the Clerk of the House, at the end of each session, to send a printed copy of the Journals thereof to the Executive, and to each branch of the Legislature of every State.

81. All questions of order shall be noted by the Clerk, with the decision, and put together at the end of the Journal of every session.

82. Whenever confidential communications are received from the President of the United States, the House shall be cleared of all persons, except the members, Clerk, Sergeant-at-Arms, and Doorkeeper, and so continued during the reading of such communications, and (unless otherwise directed by the House) during all proceedings to be had thereon. And when the Speaker or any other member shall inform the House that he has communications to make, which he conceives ought to be kept secret, the House shall, in like manner, be cleared till the communication be made; the House shall then determine whether the matter communicated requires secrecy or not, and take order accordingly.

83. The Sergeant-at-Arms and the Doorkeeper shall be sworn to keep the secrets of the House.

84. All questions relating to the propriety of business to be acted on, shall be decided without debate.

On Bills.

85. Every Bill shall be introduced by motion or leave, or by an order of the House, on the report of the Committee; and, in either case, a committee to prepare the same shall be appointed. In cases of a general nature, one day's notice at least shall be given of the motion to bring in a bill; and every such motion may be committed.

86. Every bill shall receive three several readings in the House previous to its passage; and all bills shall be dispatched in order as they were introduced, unless where the House shall direct otherwise; but no bill shall be twice read on the same day, without special order of the House.

87. The first reading of a bill shall be for information; and, if opposition be made to it, the question shall be, "Shall this bill be rejected?" If no opposition be made, or if the question to reject be negatived, the bill shall go to its second reading without a question.

88. Upon a second reading of a bill, the Speaker shall state it as ready for commitment or engrossment; and, if committed, then a question shall be, whether to a select or standing committee, or to a Committee of the Whole House; if to a Committee of the Whole House, the House shall determine on what day; but if the bill be ordered to be engrossed, the House shall appoint the day when it shall be read the third time.

89. No more than three bills originating in the House shall be committed to the same Committee of the Whole, and such bills shall be analogous in their nature, which analogy shall be determined by the Speaker.

90. After commitment and report thereof to the House, or at any time before its passage, a bill may be recommitted.

91. All bills ordered to be engrossed shall be executed in a fair and round hand.

92. No amendment, by way of *rider*, shall be received to any bill on its third reading.

93. When a bill shall pass, it shall be certified by the Clerk, noting the day of its passage at the foot thereof.

Of Committees of the Whole House.

94. It shall be a standing order of the day, throughout the session, for the House to resolve itself into a Committee of the Whole House, on the State of the Union.

95. In forming a Committee of the Whole House, the Speaker shall leave his chair, and a chairman, to preside in committee, shall be appointed by the Speaker.

96. Upon bills committed to the Committee of the Whole House, the bill shall be first read throughout by the Clerk, and then again read and debated by clauses, leaving the preamble to be last considered; the body of the bill shall not be defaced nor interlined, but all amendments noting the page and line, shall be duly entered by the Clerk on a separate paper, as the same shall be agreed to by the committee, and so reported to the House. After report, the bill shall again be subject to be debated and amended by clauses, before a question to engross it be taken.

97. All amendments made to an orginal motion in committee shall be incorporated with the motion, and so reported.

98. All amendments made to a report committed to a Committee of the Whole, shall be noted and reported as in case of bills.

99. All questions, whether in committee or in the House, shall be propounded in the order in which they were moved, except that, in filling up blanks, the largest sum and longest time shall be first put.

100. No motion or proposition for a tax or charge upon the People shall be discussed the day in which it is made or offered, and every such proposition shall receive its first discussion in a Committee of the Whole House.

101. No sum or quantum of tax or duty, voted by a Committee of the Whole House shall be increased in the House until the motion or proposition for such increase shall be first discussed and voted in a Committee of the Whole House; and so in respect to the time of its continuance.

102. All proceedings, touching appropriations of money, shall be first discussed in a Committee of the Whole House.

103. The rules of proceeding in the House shall be observed in a Committee of the Whole House, so far as they may be applicable, except the rule limiting the time of speaking; but no member shall speak twice to any question, until every member choosing to speak shall have spoken.

104. No standing rule or order of the House shall be rescinded or changed without one day's notice being given of the motion therefor. Nor shall any rule be suspended, except by a vote of at least two-thirds of the members present.

105. It shall be in order for the Committee on Enrolled Bills to report at any time.

106. No person shall be permitted to perform divine service in the chamber occupied by the House of Representatives, unless with the consent of the Speaker.

MANUAL

OF

Parliamentary Practice,

FOR THE

USE OF THE SENATE

OF THE

UNITED STATES.

BY THOMAS JEFFERSON.

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PREFACE.

The Constitution of the United States, establishing a legislature for the Union under certain forms, authorizes each branch of it 'to determine the rules of its own proceedings.' The Senate have accordingly formed some rules for its own government: but these going only to few cases, they have referred to the decision of their President, without debate and without appeal, all questions of order arising either under their own rules, or where they have provided none. This places under the discretion of the President a very extensive field of decision, and one which, irregularly exercised, would have a powerful effect on the proceedings and determinations of the House. The President must feel, weightily and seriously, this confidence in his discretion; and the necessity of recurring, for its government, to some known system of rules, that he may neither leave himself free to indulge caprice or passion, nor open to the imputation of them. But to what system of rules is he to recur, as supplementary to those of the Senate? To this there can be but one answer. To the system of regulations adopted for the government of some one of the parliamentary bodies within these States, or of that which has served as a prototype to most of them. This last is the model which we have all studied, while we are little acquainted with the modifications of it in our several States. It is deposited, too, in publications possessed by many, and open to all. Its rules are probably as wisely constructed for governing the debates of a con-

siderative body, and obtaining its true sense, as any which can become known to us; and the acquiescence of the Senate, hitherto, under the references to them, has given them the sanction of their approbation.

Considering, therefore, the law of proceedings in the Senate as composed of the precepts of the Constitution, the regulations of the Senate, and, where these are silent, of the rules of Parliament, I have here endeavored to collect and digest so much of these as is called for in ordinary practice, collating the Parliamentary with the Senatorial rules, both where they agree and where they vary. I have done this, as well to have them at hand for my own government, as to deposite with the Senate the standard by which I judge, and am willing to be judged. I could not doubt the necessity of quoting the sources of my information; among which Mr. Hatsel's most valuable book is pre-eminent; but as he has only treated some general heads, I have been obliged to recur to other authorities in support of a number of common rules of practice, to which his plan did not descend. Sometimes each authority cited supports the whole passage. Sometimes it rests on all taken together. Sometimes the authority goes only to a part of the text, the residue being inferred from known rules and principles. For some of the most familiar forms no written authority is, or can be quoted; no writer having supposed it necessary to repeat what all were presumed to know. The statement of these must rest on their notoriety.

I am aware that authorities can often be produced in opposition to the rules which I lay down as parliamentary. An attention to dates will generally remove their weight. The proceedings of Parliament in ancient times, and for a long while, were crude, multiform, and embarrassing. They have been, however, constantly advancing towards uniformity and accuracy, and have now attained a degree of aptitude to their object beyond which little is to be desired or expected.

Yet I am far from the presumption of believing that I may not have mistaken the parliamentary practice

in some cases, and especially in those minor forms, which, being practised daily, are supposed known to every body, and therefore have not been committed to writing. Our resources, in this quarter of the globe, for obtaining information on that part of the subject, are not perfect. But I have begun a sketch, which those who come after me will successively correct and fill up, till a code of rules shall be formed for the use of the Senate, the effects of which may be accuracy in business, economy of time, order, uniformity, and impartiality.

NOTE.—The rules and practices peculiar to the SENATE, are printed in *Italics*.

Those of PARLIAMENT are in the Roman letter.

A MANUAL

OF

PARLIAMENTARY PRACTICE.

IMPORTANCE OF RULES.

SEC. 1. THE IMPORTANCE OF ADHERING TO RULES.

Mr. Onslow, the ablest among the Speakers of the House of Commons, used to say, "it was a maxim he "had often heard when he was a young man, from "old and experienced members, that nothing tended "more to throw power into the hands of administra- "tion, and those who acted with the majority of the "House of Commons, than a neglect of, or departure "from, the rules of proceeding: that these forms, as "instituted by our ancestors, operated as a check and "control on the actions of the majority, and that they "were, in many instances, a shelter and protection to "the minority, against the attempts of power." So far the maxim is certainly true, and is founded in good sense, that as it is always in the power of the majority, by their numbers, to stop any improper measures proposed on the part of their opponents, the only weapons by which the minority can defend themselves against similar attempts from those in power, are the forms and rules of proceeding, which have been adopted as they were found necessary, from time to time, and are become the law of the House; by a strict adherence to which, the weaker party can only be protected from those irregularities and abuses, which these forms were intended to check, and which the wantonness of power is but too often apt to suggest to large and successful majorities. 2 *Hats.* 171, 172.

And whether these forms be in all cases the most rational or not, is really not of so great importance.

It is much more material that there should be a rule to go by, than what that rule is; that there may be a uniformity of proceeding in business, not subject to the caprice of the Speaker, or captiousness of the members. It is very material that order, decency, and regularity be preserved in a dignified public body. 2 *Hats.* 149.

Sec. II. LEGISLATURE.

All Legislative power herein granted, shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. Constitution of the United States, Art. 1. Sect. 1.

The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. Constitution of the United States, Art. 1, Sect. 6.

For the powers of Congress, see the following Articles and Sections of the Constitution of the United States. I. 4. 7. 8. 9. II. 1. 2. III. 3. IV. 1. 3. 5. and all the amendments.

Sec. III. PRIVILEGE.

The privileges of the members of Parliament, from small and obscure beginnings, have been advancing for centuries with a firm and never yielding pace. Claims seem to have been brought forward, from time to time, and repeated, till some example of their admission enabled them to build law on that example. We can only therefore state the point of progression at which they now are. It is now acknowledged, 1st. That they are at all times exempted from question elsewhere for any thing said in their own house; that during the time of privilege, 2d. Neither a member himself, his* wife, or his servants, [familiares sui] for any matter of their own, may be† arrested on mesne process, in any civil suit:

* Order of the House of Commons, 1663, July 16.
† Elsynge 217, 1 Hats. 21. 1 Grey's Deb. 133.

3d. Nor be detained under execution, though levied before time of privilege: 4th. Nor impleaded, cited, or subpœnaed in any court: 5th. Nor summoned as a witness or juror: 6th. Nor may their lands or goods be distrained: 7th. Nor their persons assaulted, or characters traduced. And the period of time, covered by privilege, before and after the session, with the practice of short prorogations under the connivance of the crown, amounts in fact to a perpetual protection against the course of justice. In one instance indeed it has been relaxed by the 10 G. 3. c. 50. which permits judiciary proceedings to go on against them. That these privileges must be continually progressive, seems to result from their rejecting all definition of them; the doctrine being that "their dignity and independence are preserved by keeping their privileges indefinite; and that 'the maxims upon which "they proceed, together with the method of proceeding, rest entirely in their own breast, and are not "defined, and ascertained by any particular stated "laws.'" 1 *Blackst.* 163, 164.

It was probably from this view of the encroaching character of privilege, that the framers of our Constitution, in their care to provide that the laws shall bind equally on all, and especially that those who make them shall not exempt themselves from their operation, have only privileged "Senators and Representatives" themselves from the single act of "arrest in all cases, except treason, felony, and a breach of the peace, during their attendance at the session of their respective houses, and in going to and returning from the same, and from being questioned in any other place for any speech or debate in either house." Const. U. S. Art. 1. Sec. 6. Under the general authority "to make all laws necessary and proper for carrying into execution the powers given them," Const. U. S. Art. 2. Sec. 8. they may provide by law the details which may be necessary for giving full effect to the enjoyment of this privilege. No such law being as yet made, it seems to stand at present on the following ground. 1. The act

*of arrest is void, ab initio.** 2. *The member arrested may be discharged on motion.* 1 *Bl.* 166. 2 *Stra.* 990. *or by habeas corpus under the Federal or State authority, as the case may be; or by a writ of privilege out of the Chancery,* 2 *Stra.* 989, *in those States which have adopted that part of the laws of England. Orders of the House of Commons,* 1550, *February* 20. 3. *The arrest being unlawful, is a trespass for which the officer and others concerned are liable to action or indictment in the ordinary courts of justice, as in other cases of unauthorized arrest.* 4. *The court before which the process is returnable is bound to act as in other cases of unauthorized proceeding, and liable also, as in other similar cases, to have their proceedings staid or corrected by the superior courts.*

The time necessary for going to, and returning from, Congress, not being defined, it will, of course, be judged of in every particular case by those who will have to decide the case. While privilege was understood in England to extend, as it does here, only to exemption from arrest, eundo, morando, et redeundo, the House of Commons themselves decided that "a convenient time was to be understood." (1580,) 1 *Hats.* 99, 100. Nor is the law so strict in point of time as to require the party to set out immediately on his return, but allows him time to settle his private affairs, and to prepare for his journey; and does not even scan his road very nicely, nor forfeit his protection for a little deviation from that which is most direct; some necessity perhaps constraining him to it. 2 *Stra.* 986, 987.

This privilege from arrest, privileges of course against all process, the disobedience to which is punishable by an attachment of the person; so a subpœna ad respondendum, *or* testificandum, or a summons on a jury; and with reason; because a member has superior duties to perform in another place. *When a representative is withdrawn from his seat by summons, the* 40,000 *people whom he represents lose their voice in debate and vote, as they do on his voluntary absence:*

* 2 Stra. 989.

when a senator is withdrawn by summons, his State loses half its voice in debate and vote, as it does on his voluntary absence. The enormous disparity of evil admits no comparison.

So far there will probably be no difference of opinion as to the privileges of the two houses of Congress: but in the following cases it is otherwise. In Dec. 1795, *the H. of R. committed two persons of the name of Randall and Whitney, for attempting to corrupt the integrity of certain members; which they considered as a contempt and breach of the privileges of the house: and the facts being proved, Whitney was detained in confinement a fortnight, and Randall three weeks, and was reprimanded by the Speaker. In March,* 1796, *the H. of R. voted a challenge given to a member of their house to be a breach of the privileges of the house; but satisfactory apologies and acknowledgments being made, no further proceeding was had. The editor of the Aurora having, in his paper of February* 19, 1800, *inserted some paragraphs defamatory of the Senate, and failed in his appearance, he was ordered to be committed. In debating the legality of this order, it was insisted, in support of it, that every man, by the law of nature, and every body of men, possesses the right of self-defence; that all public functionaries are essentially invested with the powers of self-preservation; that they have an inherent right to do all acts necessary to keep themselves in a condition to discharge the trusts confided to them; that whenever authorities are given, the means of carrying them into execution are given by necessary implication; that thus we see the British parliament exercise the right of punishing contempts; all the State Legislatures exercise the same power; and every court does the same; that, if we have it not, we sit at the mercy of every intruder who may enter our doors or gallery, and, by noise and tumult, render proceeding in business impracticable; that if our tranquillity is to be perpetually disturbed by newspaper defamation, it will not be possible to exercise our functions with the requisite coolness and deliberation; and that we must*

therefore have a power to punish these disturbers of our peace and proceedings. To this it was answered, that the parliament and courts of England have cognizance of contempts by the express provisions of their law; that the State legislatures have equal authority, because their powers are plenary; they represent their constituents completely, and possess all their powers, except such as their constitutions have expressly denied them; that the courts of the several States have the same powers by the laws of their States, and those of the federal government by the same State laws adopted in each State, by a law of Congress; that none of these bodies, therefore, derive those powers from natural or necessary right, but from express law; that Congress have no such natural or necessary power, nor any powers but such as are given them by the constitution; that that has given them, directly, exemption from personal arrest, exemption from question elsewhere for what is said in their house, and power over their own members and proceedings; for these no further law is necessary, the constitution being the law; that, moreover, by that article of the constitution which authorizes them "to make all laws necessary and proper for carrying into execution the powers vested by the constitution in them," they may provide by law for an undisturbed exercise of their functions, e. g. *for the punishment of contempts, of affrays or tumult in their presence, &c. but, till the law be made, it does not exist; and does not exist, from their own neglect; that, in the mean time, however, they are not unprotected, the ordinary magistrates and courts of law being open and competent to punish all unjustifiable disturbances or defamations, and even their own sergeant, who may appoint deputies ad libitum to aid him,* 3 Grey, 59. 147. 255. *is equal to small disturbances; that in requiring a previous law, the constitution had regard to the inviolability of the citizen, as well as of the member; as, should one house in the regular form of a bill, aim at too broad privileges, it may be checked by the other, and both by the President; and also as, the law being promulgated, the citizen*

will know how to avoid offence. But if one branch may assume its own privileges without control, if it may do it on the spur of the occasion, conceal the law in its own breast, and after the fact committed, make its sentence both the law and the judgment on that fact; if the offence is to be kept undefined, and to be declared only ex re nata, and according to the passions of the moment, and there be no limitation either in the manner or measure of the punishment, the condition of the citizen will be perilous indeed. Which of these doctrines will prevail, time will decide. Where there is no fixed law, the judgment on any particular case is the law of that single case only, and dies with it. When a new and even a similar case arises, the judgment which is to make, and at the same time apply the law, is open to question and consideration, as are all new laws. Perhaps Congress, in the mean time, in their care for the safety of the citizen, as well as that for their own protection, may declare by law what is necessary and proper to enable them to carry into execution the powers vested in them, and thereby hang up a rule for the inspection of all, which may direct the conduct of the citizen, and at the same time test the judgments they shall themselves pronounce in their own case.

Privilege from arrest takes place by force of the election; and before a return be made, a member elected may be named of a committee, and is to every intent a member except that he cannot vote until he is sworn. *Memor.* 107, 108. *D'Ewes,* 642. *col.* 2. 643. *col.* 1. *Pet. Miscel. Parl.* 119. *Lex Parl. c.* 23. 2 *Hats.* 22. 62.

Every man must, at his peril, take notice who are members of either house returned of record. *Lex. Parl.* 23. 4 *inst.* 24.

On complaint of a breach of privilege, the party may either be summoned, or sent for in custody of the sergeant. 1 *Grey,* 88. 95.

The privilege of a member is the privilege of the house. If the member waive it without leave, it is a ground for punishing him, but cannot in effect waive the privilege of the house. 3 *Grey,* 140. 222.

For any speech or debate in either house, they shall not be questioned in any other place. *Const. U. S. I.* 6. *S. P. protest of the Commons to James I.* 1621. 2 *Rapin. No.* 54. *p.* 211, 212. But this is restrained to things done in the house in a parliamentary course. 1 *Rush.* 663. For he is not to have privilege contra morem parliamentariam, to exceed the bounds and limits of his place and duty. *Com. p.*

If an offence be committed by a member in the house, of which the house has cognizance, it is an infringement of their right for any person or court to take notice of it, till the house has punished the offender, or referred him to a due course. *Lex Parl.* 63.

Privilege is in the power of the house, and is a restraint to the proceeding of inferior courts; but not of the house itself. 2 *Nalson*, 450. 2 *Grey*, 399. For whatever is spoken in the house is subject to the censure of the house; and offences of this kind have been severely punished by calling the person to the bar to make submission, committing him to the tower, expelling the house, &c. *Scob.* 72. *L. Parl. c.* 22.

It is a breach of order for the speaker to refuse to put a question which is in order. 2 *Hats.* 175, 6. 5 *Grey*, 133.

And even in cases of treason, felony, and breach of the peace, to which privilege does not extend as to substance, yet in parliament a member is privileged as to the mode of proceeding. The case is first to be laid before the house, that it may judge of the fact and of the grounds of the accusation, and how far forth the manner of the trial may concern their privilege. Otherwise it would be in the power of other branches of the government, and even of every private man, under pretences of treason, &c. to take any man from his service in the house, and so as many, one after another, as would make the house what he pleaseth. *Dec. of the Com. on the King's declaring Sir John Hotham a traitor.* 4 *Rushw.* 586. So when a member stood indicted for felony, it was adjudged that he ought to remain of the house till conviction. For it may be any man's case, who is guiltless, to be accused and indict-

ed of felony, or the like crime. 23 *El.* 1580. *D'Ewes*, 283. *col.* 1. *Lex. Parl.* 133.

When it is found necessary for the public service to put a member under arrest, or when, on any public inquiry, matter comes out which may lead to affect the person of a member, it is the practice immediately to acquaint the house that they may know the reasons for such a proceeding, and take such steps as they think proper. 2 *Hats.* 259. Of which see many examples. *Ib.* 256, 257, 258. But the communication is subsequent to the arrest. 1 *Blackst.* 167.

It is highly expedient, says Hatsell, for the due preservation of the privileges of the separate branches of the legislature, that neither should encroach on the other, or interfere in any matter depending before them, so as to preclude, or even to influence that freedom of debate which is essential to a free council. They are therefore not to take notice of any bills or other matters depending, or of votes that have been given, or of speeches which have been held, by the members of either of the other branches of the legislature until the same have been communicated to them in the usual parliamentary manner. 2 *Hats.* 252. 4 *Inst.* 15. *Seld. Jud.* 53. Thus the king's taking notice of the bill, for suppressing soldiers, depending before the house, his proposing a provisional clause for a bill before it was presented to him by the two houses; his expressing displeasure against some persons for matters moved in parliament during the debate and preparation of a bill, were breaches of privilege; 2 *Nalson*, 743; and in 1783, December 17, it was declared a breach of fundamental privileges, &c. to report any opinion of the king, on any bill or proceeding depending in either house of parliament, with a view to influence the votes of the members. 2 *Hats.* 251, 6.

Sec. IV. ELECTIONS.

The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each State by the legislature thereof; but the Con-

gress may at any time by law make or alter such regulations, except as to the places of choosing senators. Const. I. 4.

Each house shall be the judge of the elections, returns, and qualifications of its own members. Const. I. 5.

Sec. V. QUALIFICATIONS.

The Senate of the United States shall be composed of two members from each State, chosen by the legislature thereof for six years, and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the end of the 2d *year; of the second class at the expiration of the* 4th *year; and of the third class at the expiration of the* 6th *year; so that one-third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.*

No person shall be a senator who shall not have attained to the age of 30 *years, and been* 9 *years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.* Const. I. 3.

The House of Representatives shall be composed of members chosen every second year, by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

No person shall be a representative who shall not have attained to the age of 25 *years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.*

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers; which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative. Constitution of the United States, I. 2.

The provisional apportionments of representatives made in the constitution in 1787, *and afterwards by Congress, were as follows :*

States.	1787.	1790.	1800.	1810.	1820.*
Maine - - -	0	0	0	0	7
New-Hampshire	3	4	5	6	6
Massachusetts -	8	14	17	20	13
Rhode-Island -	1	2	2	2	2
Connecticut -	5	7	7	7	6
New-York - -	6	10	17	27	34
New-Jersey -	4	5	6	6	6
Pennsylvania -	8	13	18	23	26
Delaware - -	1	1	1	2	1
Maryland - -	6	8	9	9	9
Virginia - -	10	19	22	28	22
North-Carolina	5	10	12	13	13
South-Carolina	5	6	8	9	9
Georgia - -	3	2	4	6	7
Vermont - -	2	2	4	6	5
Kentucky - -	2	2	6	10	12
Tennessee - -	0	1	3	6	9
Ohio - - - -	0	0	1	6	14
Louisiana - -	0	0	0	1	3
Indiana - - -	0	0	0	1	3
Mississippi - -	0	0	0	1	1
Illinois - - -	0	0	0	1	1
Alabama - -	0	0	0	1	2
Missouri - -	0	0	0	0	1

When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies. I. 2.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office. Const. I. 6.

* Agreeably to act of 3d of March, 1823, fixing the ratio of one for forty thousand.

Sec. VI. QUORUM.

A majority of each house shall constitute a quorum to do business: but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide. Const. I. 5.

In general, the chair is not to be taken till a quorum for business is present; unless, after due waiting, such a quorum be despaired of, when the chair may be taken and the house adjourned. And whenever, during business, it is observed that a quorum is not present, any member may call for the house to be counted, and being found deficient, business is suspended. 2 *Hats.* 125, 126.

The President having taken the chair, and a quorum being present, the journal of the preceding day shall be read, to the end that any mistake may be corrected that shall have been made in the entries. Rules of the Senate, 1.

Sec. VII. CALL OF THE HOUSE.

On a call of the House, each person rises up as he is called and answereth; the absentees are then only noted, but no excuse to be made till the house be fully called over. Then the absentees are called a second time, and if still absent, excuses are to be heard. *Ord. House of Commons*, 92.

They rise that their persons may be recognised; the voice, in such a crowd, being an insufficient verification of their presence. But in so small a body as the Senate of the United States, the trouble of rising cannot be necessary.

Orders for calls on different days may subsist at the same time. 2 *Hats.* 72.

Sec. VIII. ABSENCE.

No member shall absent himself from the service of the Senate, without leave of the Senate first obtained.

And in case a less number than a quorum of the Senate shall convene, they are hereby authorized to send the Sergeant-at-arms, or any other person or persons by them authorized, for any or all absent members, as the majority of such members present shall agree, at the expense of such absent members respectively, unless such excuse for non-attendance shall be made, as the Senate, when a quorum is convened, shall judge sufficient: and in that case the expense shall be paid out of the contingent fund. And this rule shall apply as well to the first convention of the Senate, at the legal time of meeting, as to each day of the session, after the hour is arrived, to which the Senate stood adjourned. Rule 8.

Sec. IX. SPEAKER.

The Vice-President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided. Constitution, I. 3.

The Senate shall choose their officers, and also a President pro tempore in the absence of the Vice-President, or when he shall exercise the office of President of the United States. Ib.

The House of Representatives shall choose their Speaker and other officers. Const. I. 2.

When but one person is proposed, and no objection made, it has not been usual in parliament to put any question to the house; but without a question, the members proposing him, conduct him to the chair. But if there be objection, or another proposed, a question is put by the clerk. 2 *Hats.* 158. As are also questions of adjournment. 6 *Grey*, 406. Where the house debated and exchanged messages and answers with the king for a week, without a speaker, till they were prorogued. They have done it de diem in diem for 14 days. 1 *Chand.* 331. 335.

In the Senate, a President pro tempore in the absence of the Vice-President is proposed and chosen by ballot. His office is understood to be determined on the Vice-President's appearing and taking the

chair, or at the meeting of the Senate after the first recess.

Where the speaker has been ill, other speakers pro tempore have been appointed. Instances of this, are 1 *H.* 4. Sir John Cheyney, and for Sir Wm. Sturton, and in 15 *H.* 6. Sir John Tyrrel, in 1656, Jan. 27, 1658. Mar. 9, 1659. Jan. 13.

Sir Job Charlton ill, Seymour chosen 1673, Feb. 18.
Seymour being ill, Sir Robert Sawyer chosen, 1678, April 15.
Sawyer being ill, Seymour chosen.

} Not merely pro tempore. 1 *Chand.* 169. 276, 277.

Thorpe in execution, a new speaker chosen. 31 *H. VI.* 3 *Grey*, 11. and Mar. 14, 1694, Sir John Trevor chosen. There have been no later instances. 2 *Hats.* 161. 4 *inst.* 8 *L. Parl.* 263.

A speaker may be removed at the will of the house, and a speaker pro tempore appointed.* 2 *Grey*, 186. 5 *Grey*, 134.

Sec. X. ADDRESS.

The President shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient. Const. II. 3.

A joint address of both Houses of Parliament is read by the Speaker of the House of Lords. It may be attended by both Houses in a body, or by a Committee from each House, or by the two Speakers only. An address of the House of Commons only, may be presented by the whole House, or by the Speaker, 9 *Grey*, 473. 1 *Chandler*, 298. 301; or by such particular members as are of the privy council. 2 *Hats.* 278.

* Rule 23. The Vice-President, or President of the Senate, pro tempore, shall have the right to name a member to perform the duties of the chair; but such substitution shall not extend beyond an adjournment.

Sec. XI. COMMITTEES.

Standing Committees, as of Privileges and Elections, &c., are usually appointed at the first meeting, to continue through the session. The person first named is generally permitted to act as chairman. But this is a matter of courtesy; every Committee having a right to elect their own chairman, who presides over them, puts questions, and reports their proceedings to the House. 4 *inst.* 11, 12. *Scob.* 9. 1 *Grey*, 122.

At these Committees the members are to speak standing, and not sitting: though there is reason to conjecture it was formerly otherwise. *D'Ewes*, 630. *col.* 1. 4. *Parl. Hist.* 440. 2 *Hats.* 77.

Their proceedings are not to be published, as they are of no force till confirmed by the House. *Rushw. part* 3. *vol.* 2. 74. 3 *Grey*, 401. *Scob.* 39. Nor can they receive a petition but through the House. 9 *Grey*, 412.

When a Committee is charged with an inquiry, if a member prove to be involved, they cannot proceed against him, but must make a special report to the House; whereupon the member is heard in his place, or at the bar, or a special authority is given to the Committee to inquire concerning him. 9 *Grey*, 523.

So soon as the House sits, and a Committee is notified of it, the chairman is in duty bound to rise instantly, and the members to attend the service of the House. 2 *Nals.* 319.

It appears that on joint Committees of the Lords and Commons, each Committee acted integrally in the following instances: 7 *Grey*, 261. 278. 285. 338. 1 *Chandler*, 357. 462. In the following instances it does not appear whether they did or not: 6 *Grey*, 129. 7 *Grey*, 213. 229. 321.*

* Rule 33. The following Standing Committees, to consist of five members, each, shall be appointed at

Sec. XII. COMMITTEE OF THE WHOLE.

The speech, messages, and other matters of great concernment, are usually referred to a committee of the whole house, 6 *Grey*, 311. where general principles are digested in the form of resolutions, which are debated and amended till they get into a shape which meets the approbation of a majority. These being reported and confirmed by the house, are then referred to one or more select committees, according as the subject divides itself into one or more bills. *Scob.* 36. 44. Propositions for any charge on the people are especially to be first made in a committee of the whole.

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the commencement of each session, with leave to report by bill or otherwise:

A Committee on Foreign Relations.
A Committee on Finance.
A Committee on Commerce.
A Committee on Manufactures.
A Committee on Agriculture.
A Committee on Military Affairs.
A Committee on the Militia.
A Committee on Naval Affairs.
A Committee on Public Lands,
A Committee on Private Land Claims.
A Committee on Indian Affairs.
A Committee of Claims.
A Committee on the Judiciary.
A Committee on the Post-Office and Post Roads.
A Committee on Pensions.
A Committee on the District of Columbia.

A Committee of three members, whose duty it shall be to audit and control the contingent expenses of the Senate.

And a Committee, consisting of three members, whose duty it shall be to examine all bills, amendments, resolutions, or motions, before they go out of the possession of the Senate, and to make report that they are correctly engrossed; which report shall be entered on the journal.

3 *Hats.* 127. The sense of the whole is better taken in committee, because in all committees every one speaks as often as he pleases. *Scob.* 49. They generally acquiesce in the chairman named by the speaker; but, as well as all other committees, have a right to elect one, some member, by consent, putting the question. *Scob.* 36. 3 *Grey*, 301. The form of going from the house into committee, is for the speaker, on motion, to put the question that the house do now resolve itself into a committee of the whole to take under consideration such a matter, naming it. If determined in the affirmative, he leaves the chair, and takes a seat elsewhere, as any other member; and the person appointed chairman seats himself at the clerk's table. *Scob.* 36. Their quorum is the same as that of the house; and if a defect happens, the chairman, on a motion and question, rises, the speaker resumes the chair, and the chairman can make no other report than to inform the house of the cause of their dissolution. If a message is announced during a committee, the speaker takes the chair, and receives it because the committee cannot. 2 *Hats.* 125, 126.

In a committee of the whole, the tellers on a division, differing as to numbers, great heats and confusion arose, and danger of a decision by the sword. The speaker took the chair, the mace was forcibly laid on the table; whereupon, the members retiring to their places, the speaker told the house 'he had taken the chair without an order, to bring the house into order.' Some excepted against it; but it was generally approved as the only expedient to suppress the disorder. And every member was required, standing up in his place, to engage that he would proceed no further in consequence of what had happened in the grand committee, which was done. 3 *Grey*, 128.

A committee of the whole being broken up in disorder, and the chair resumed by the speaker without an order, the house was adjourned. The next day the committee was considered as thereby dissolved, and the subject again before the house; and it was decided in the house, without returning into committee. 3 *Grey*, 130.

No previous question can be put in a committee; nor can this committee adjourn as others may; but if their business is unfinished, they rise, on a question, the house is resumed, and the chairman reports that the committee of the whole, have, according to order, had under their consideration such a matter, and have made progress therein; but not having had time to go through the same, have directed him to ask leave to sit again. Whereupon a question is put on their having leave, and on the time the house will again resolve itself into a committee. *Scob.* 38. But if they have gone through the matter referred to them, a member moves that the committee may rise, and the chairman report their proceedings to the house; which being resolved, the chairman rises, the speaker resumes the chair, the chairman informs him that the committee have gone through the business referred to them, and that he is ready to make report when the house shall think proper to receive it. If the house have time to receive it, there is usually a cry of 'now, now,' whereupon he makes the report: but if it be late, the cry is 'to-morrow, to-morrow,' or 'on Monday, &c.' or a motion is made to that effect, and a question put that it be received, to-morrow, &c. *Scob.* 38.

In other things the rules of proceeding are to be the same as in the house. *Scob.* 39.

Sec. XIII. EXAMINATION OF WITNESSES.

Common fame is a good ground for the house to proceed by inquiry, and even to accusation. *Resolution House Commons*, 1 *Car.* 1, 1625. *Rush, L. Parl.* 115. 1 *Grey*, 16—22. 92. 8 *Grey*, 21. 23. 27. 45.

Witnesses are not to be produced but where the house has previously instituted an inquiry, 2 *Hats.* 102. nor then are orders for their attendance given blank, 3 *Grey*, 51.

When any person is examined before a committee, or at the bar of the house, any member wishing to ask the person a question, must address it to the speaker or chairman, who repeats the question to the person, or

says to him, 'you hear the question, answer it.' But if the propriety of the question be objected to, the speaker directs the witness, counsel and parties, to withdraw; for no question can be moved or put, or debated while they are there. 2 *Hats.* 108. Sometimes the questions are previously settled in writing before the witness enters, *ib.* 106, 107. 8 *Grey*, 64. The questions asked must be entered in the journals. 3 *Grey*, 81. But the testimony given in answer before the house is never written down; but before a committee it must be, for the information of the house who are not present to hear it. 7 *Grey*, 52. 334.

If either house have occasion for the presence of a person in custody of the other, they ask the other their leave that he may be brought up to them in custody. 3 *Hats.* 52.

A member, in his place, gives information to the house of what he knows of any matter under hearing at the bar. *Jour. H. of C. Jan.* 22, 1744-5.

Either house may request, but not command the attendance of a member of the other. They are to make the request by message to the other house, and to express clearly the purpose of attendance, that no improper subject of examination may be tendered to him. The house then gives leave to the member to attend, if he choose it; waiting first to know from the member himself whether he chooses to attend, till which they do not take the message into consideration. But when the peers are sitting as a court of criminal judicature, they may order attendance, unless where it be a case of impeachment by the Commons. There it is to be a request. 3 *Hats.* 17. 9 *Grey*, 306. 406. 10 *Grey*, 133.

Counsel are to be heard only on private, not on public bills, and on such points of law only as the House shall direct. 10 *Grey*, 61.

Sec. XIV. ARRANGEMENT OF BUSINESS.

The Speaker is not precisely bound to any rules as to what bills or other matter shall be first taken up; but is left to his own discretion, unless the House on a question decide to take up a particular subject. *Hakew.* 136.

A settled order of business is, however, necessary for the government of the presiding person, and to restrain individual members from calling up favorite measures, or matters under their special patronage, out of their just turn. It is useful also for directing the discretion of the House, when they are moved to take up a particular matter, to the prejudice of others having priority of right to their attention in the general order of business.

In Senate, the bills and other papers which are in possession of the House, and in a state to be acted on, are arranged every morning, and brought on in the following order.

1. *Bills ready for a second reading are read, that they may be referred to Committees, and so be put under way. But if, on their being read, no motion is made for commitment, they are then laid on the table in the general file, to be taken up in their just turn.*

2. *After twelve o'clock, bills ready for it are put on their passage.*

3. *Reports in possession of the House, which offer grounds for a bill, are to be taken up, that the bill may be ordered in.*

4. *Bills, or other matters before the House, and unfinished on the preceding day, whether taken up in turn, or on special order, are entitled to be resumed and passed on through their present stage.*

5. *These matters being despatched, for preparing and expediting business, the general file of bills and other papers is then taken up, and each article of it is brought on according to its seniority, reckoned by the date of its first introduction to the House. Reports on bills belong to the dates of their bills.*

[*The arrangement of the business of the Senate is now as follows:*

1. *Motions previously submitted.*

2. *Reports of Committees previously made.*

3. *Bills from the House of Representatives, and those introduced on leave, which have been read the first time, are read the second time; and, if not re-*

ferred to a Committee, are considered in Committee of the Whole, and proceeded with as in other cases.

4. After twelve o'clock, engrossed bills of the Senate, and bills of the House of Representatives, on third reading, are put on their passage.

5. If the above are finished before one o'clock, the general file of bills, consisting of those reported from Committees on the second reading, and those reported from Committees after having been referred, are taken up in the order in which they were reported to the Senate by the respective Committees.

6. At one o'clock, if no business be pending, or if no motion be made to proceed to other business, the special orders are called, at the head of which stands the unfinished business of the preceding day.]

In this way we do not waste our time in debating what shall be taken up; we do one thing at a time; follow up a subject while it is fresh, and till it is done with; clear the House of business gradatim as it is brought on, and prevent, to a certain degree, its immense accumulation towards the close of the session.

Arrangement, however, can only take hold of matters in possession of the House. New matter may be moved at any time, when no question is before the House. Such are original motions, and reports on bills. Such are bills from the other House, which are received at all times, and receive their first reading as soon as the question then before the House is disposed of; and bills brought in on leave, which are read first whenever presented. So messages from the other House, respecting amendments to bills, are taken up as soon as the House is clear of a question, unless they require to be printed, for better consideration. Orders of the day may be called for, even when another question is before the House.

SEC. XV. ORDER.

Each House may determine the rules of its proceedings; punish its members for disorderly beha-

viour ; and, with the concurrence of two-thirds, expel a member. Const. I. 5.

In Parliament 'instances make order,' per Speaker Onslow. 2 *Hats.* 141. But what is done only by one Parliament, cannot be called custom of Parliament, by Prynne. 1 *Grey*, 52.

Sec. XVI. ORDER RESPECTING PAPERS.

The clerk is to let no journals, records, accounts, or papers, be taken from the table, or out of his custody. 2 *Hats.* 193, 194.

Mr. Prynne having at a committee of the whole amended a mistake in a bill without order or knowledge of the committee, was reprimanded. 1 *Chand.* 77.

A bill being missing, the house resolved that a protestation should be made and subscribed by the members 'before Almighty God, and this honourable house, that neither myself nor any other to my knowledge, have taken away, or do at this present conceal a bill entitled, &c. 5 *Grey*, 202.

After a bill is engrossed, it is put into the speaker's hands, and he is not to let any one have it to look into. *Town, col.* 202.

Sec. XVII. ORDER IN DEBATE.

When the speaker is seated in his chair, every member is to sit in his place. *Scob.* 6. 3 *Grey*, 403.

When any member means to speak, he is to stand up in his place, uncovered, and to address himself, not to the house, or any particular member, but to the speaker, who calls him by his name, that the house may take notice who it is that speaks. *Scob.* 6. *D'Ewes*, 417. *Col.* 1. 2 *Hats.* 77. 4 *Grey*, 66. 8 *Grey*, 108. But members who are indisposed may be indulged to speak sitting. 2 *Hats.* 75. 77. 1 *Grey*, 195.

In Senate every member when he speaks, shall address the chair standing in his place, and when he has finished shall sit down. Rule 3.

When a member stands up to speak, no question is to be put, but he is to be heard, unless the house overrule him. 4 *Grey*, 390. 5 *Grey*, 6. 143.

If two or more rise to speak nearly together, the speaker determines who was first up, and calls him by name, whereupon he proceeds, unless he voluntarily sits down and gives way to the other. But sometimes the house does not acquiesce in the speaker's decision, in which case the question is put, 'which member was first up?' 2 *Hats.* 76. *Scob.* 7. *D'Ewes*, 434. *col.* 1, 2.

In the Senate of the United States, the President's decision is without appeal. Their rule is in these words: when two members rise at the same time, the President shall name the person to speak; but in all *cases the member who shall first rise and address the chair shall speak first. Rule* 5.

No man may speak more than once to the same bill on the same day; or even on another day, if the debate be adjourned. But if it be read more than once in the same day, he may speak once at every reading. *Co.* 12, 115. *Hakew.* 148. *Scob.* 58. 2 *Hats.* 75. Even a change of opinion does not give a right to be heard a second time. *Smyth Comw. L.* 2. *c.* 3. *Arcan. Parl.* 17.

The corresponding rule of Senate is in these words: no member shall speak more than twice in any one debate, on the same day, without leave of the Senate. Rule 4.

But he may be permitted to speak again to clear a matter of fact. 3 *Grey*, 357. 416. Or merely to explain himself, 2 *Hats.* 73. in some material part of his speech, *ib.* 75, or to the manner or words of the question, keeping himself to that only, and not travelling into the merits of it; *Memorials in Hakew.* 29; or to the orders of the house if they be transgressed, keeping within that line, and not falling into the matter itself. *Mem. Hakew.* 30, 31.

But if the speaker rises to speak, the member standing up ought to sit down, that he may be first heard. *Town. col.* 205. *Hale parl.* 133. *Mem. in Hakew.* 30, 31. Nevertheless, though the speaker may of right speak to matters of order, and be first heard, he is restrained from speaking on any other subject except where the house have occasion for facts within his knowledge; then he may, with their leave, state the matter of fact. 3 *Grey*, 38.

No one is to speak impertinently or beside the question, superfluously or tediously. *Scob.* 31. 33. 2 *Hats.* 166. 168. *Hale parl.* 134.

No person is to use indecent language against the proceedings of the house, no prior determination of which is to be reflected on by any member, unless he means to conclude with a motion to rescind it. 2 *Hats.* 169, 170. *Rushw. p.* 3. *v.* 1. *fol.* 42. But while a proposition under consideration, is still in fieri, though it has even been reported by a committee, reflections on it are no reflections on the house. 9 *Grey*, 508.

No person, in speaking, is to mention a member then present by his name; but to describe him by his seat in the house, or who spoke last, or on the other side of the question, &c. *Mem. in Hakew.* 3. *Smyth's Comw. L.* 2. *c.* 3. nor to digress from the matter to fall upon the person; *Scob.* 31. *Hale parl.* 133. 2 *Hats.* 166. by speaking, reviling, nipping, or unmannerly words against a particular member. *Smyth Comw. L.* 2. *c.* 3. The consequences of a measure may be reprobated in strong terms; but to arraign the motives of those who propose to advocate it, is a personality, and against order. Qui digreditur a materia ad personam, Mr. Speaker ought to suppress. *Ord. Com.* 1604. *Apr.* 19.

When a member shall be called to order by the President or a Senator he shall sit down; and every question of order shall be decided by the President without debate subject to an appeal to the Senate: and the President may call for the sense of the Senate on any question of order. Rule 6.

No member shall speak to another, or otherwise interrupt the business of the Senate, or read any printed paper while the journals or public papers are reading, or when any member is speaking in any debate. Rule 2.

No one is to disturb another in his speech by hissing, coughing, spitting, 6 *Grey*, 332. *Scob.* 8. *D'Ewes*, 332. *col.* 1. 640. *col.* 2. speaking or whispering to another. *Scob.* 6. *D'Ewes*, 487. *col.* 1. nor to stand up or interrupt him; *Town. col.* 205. *Mem. in Hakew.* 31.

nor to pass between the speaker and the speaking member, nor to go across the house, *Scob.* 6. or to walk up and down it, or to take books or papers from the table, or write there. 2 *Hats.* 171.

Nevertheless, if a member finds that it is not the inclination of the house to hear him, and that by conversation or any other noise they endeavor to drown his voice, it is his most prudent way to submit to the pleasure of the house, and sit down; for it scarcely ever happens that they are guilty of this piece of ill manners without sufficient reason, or inattentive to a member who says any thing worth their hearing. 2 *Hats.* 77, 78.

If repeated calls do not produce order the speaker may call by his name any member obstinately persisting in irregularity, whereupon the house may require the member to withdraw. He is then to be heard in exculpation, and to withdraw. Then the speaker states the offence committed; and the house considers the degree of punishment they will inflict. 2 *Hats.* 167, 7, 8. 172,

For instances of assaults and affrays in the House of Commons, and the proceedings thereon, see 1 *Pet. Misc.* 82. 3 *Grey*, 128. 4 *Grey* 328. 5 *Grey*, 382. 6 *Grey*, 254. 10 *Grey*, 8. Whenever warm words, or an assault have passed between members, the house, for the protection of their members, requires them to declare in their places not to prosecute any quarrel, 3 *Grey*, 128. 293. 5 *Grey* 289; orders them to attend the speaker who is to accommodate their differences and report to the house; 3 *Grey*, 419. and they are put under restraint if they refuse, or until they do. 9 *Grey*, 234. 312.

Disorderly words are not to be noticed till the member has finished his speech. 5 *Grey*, 356. 6 *Grey*, 60. Then the person objecting to them, and desiring them to be taken down by the clerk at the table, must repeat them. The speaker then may direct the clerk to take them down in his minutes. But if he thinks them not disorderly, he delays the direction. If the call becomes pretty general, he orders the clerk to take them down, as stated by the objecting member. They are then part

of his minutes, and when read to the offending member, he may deny they were his words, and the house must then decide by a question whether they are his words or not. Then the member may justify them, or explain the sense in which he used them, or apologize. If the house is satisfied, no farther proceeding is necessary. But if two members still insist to take the sense of the house, the member must withdraw, before that question is stated, and then the sense of the house is to be taken. 2 *Hats.* 199. 4 *Grey*, 170. 6 *Grey*, 59. When any member has spoken or other business intervened, after offensive words spoken, they cannot be taken notice of for censure. And this is for the common security of all, and to prevent mistakes which must happen if words are not taken down immediately. Formerly they might be taken down at any time the same day. 2 *Hats.* 196. *Mem. in Hakew.* 71. 3 *Grey*, 48. 9 *Grey*, 514.

Disorderly words spoken in a committee must be written down as in the house; but the committee can only report them to the house for animadversion. 6 *Grey*, 46.

The rule of the Senate says, If the member be called to order by a Senator, for words spoken, the exceptionable words shall immediately be taken down in writing, that the President may be better enabled to judge of the matter. Rule 7.

In parliament, to speak irreverently or seditiously against the king is against order. *Smith's Comw. L.* 2. *c.* 3. 2 *Hats.* 170.

It is a breach of order in debate to notice what has been said on the same subject in the other house, or the particular votes or majorities on it there: because the opinion of each house should be left to its own independency, not to be influenced by the proceedings of the other; and the quoting them might beget reflections leading to a misunderstanding between the two houses. 8 *Grey*, 22.

Neither house can exercise any authority over a member or officer of the other, but should complain to the

house of which he is, and leave the punishment to them. Where the complaint is of words disrespectfully spoken by a member of another house, it is difficult to obtain punishment, because of the rules supposed necessary to be observed (as to the immediate noting down of words) for the security of members. Therefore it is the duty of the house, and more particularly of the speaker, to interfere immediately, and not to permit expressions to go unnoticed, which may give a ground of complaint to the other house, and introduce proceedings and mutual accusations between the two houses, which can hardly be terminated without difficulty and disorder. 3 *Hats.* 51.

No member may be present when a bill or any business concerning himself is debating; nor is any member to speak to the merits of it till he withdraws. 2 *Hats.* 219. The rule is, that if a charge against a member arise out of a report of a committee, or examination of witnesses in the house, as the member knows from that to what points he is to direct his exculpation, he may be heard to those points, before any question is moved or stated against him. He is then to be heard, and withdraw before any question is moved. But if the question itself is the charge, as for breach of order, or matter arising in the debate; there the charge must be stated, that is, the question must be moved, himself heard, and then to withdraw. 2 *Hats.* 121, 122.

Where the private interests of a member are concerned in a bill or question, he is to withdraw. And where such an interest has appeared, his voice has been disallowed, even after a division. In a case so contrary, not only to the laws of decency, but to the fundamental principle of the social compact, which denies to any man to be a judge in his own cause, it is for the honor of the house that this rule, of immemorial observance, should be strictly adhered to. 2 *Hats.* 119. 121. 6 *Grey*, 368.

No member is to come into the house with his head covered, nor to remove from one place to another with his hat on, nor is to put on his hat in coming in, or removing until he be set down in his place. *Scob.* 6.

A question of order may be adjourned to give time to look into precedents. 2 *Hats.* 118.

In parliament, all decisions of the speaker may be controlled by the house. 3 *Grey*, 319.

Sec. XVIII. ORDERS OF THE HOUSE.

Of right, the door of the house ought not to be shut, but to be kept by porters, or sergeants-at-arms, assigned for that purpose. *Mod. ten. Parl.* 23.

By the rules of the Senate, on motion made and seconded to shut the doors of the Senate on the discussion of any business, which may in the opinion of a member, require secrecy, the President shall direct the gallery to be cleared, and during the discussion of such motion, the doors shall remain shut. Rule 18.

No motion shall be deemed in order to admit any person or persons whatever within the doors of the Senate chamber, to present any petition, memorial, or address, or to hear any such read. Rule 19.

The only case where a member has a right to insist on any thing, is where he calls for the execution of a subsisting order of the House. Here, there having been already a resolution, any person has a right to insist that the Speaker, or any other whose duty it is, shall carry it into execution; and no debate or delay can be had on it. Thus any member has a right to have the house or gallery cleared of strangers, an order existing for that purpose; or to have the house told when there is not a quorum present. 2 *Hats.* 87. 129. How far an order of the House is binding, see *Hakew* 392.

But where an order is made that any particular matter be taken up on a particular day, there a question is to be put when it is called for, whether the house will now proceed to that matter? Where orders of the day are on important or interesting matter, they ought not to be proceeded on till an hour at which the house is usually full, *(which in Senate is at noon.)*

Orders of the day may be discharged at any time, and a new one made for a different day. 3 *Grey*, 48. 313.

When a session is drawing to a close, and the impor-

tant bills are all brought in, the house, in order to prevent interruption by further unimportant bills, sometimes come to a resolution that no new bill be brought in except it be sent from the other house. 3 *Grey*, 156.

All orders of the House determine with the session; and one taken under such an order may, after the session is ended, be discharged on a habeas corpus. *Raym.* 120. *Jacob's L. D. by Ruffhead. Parliament*, 1 *Lev.* 165, *Prichard's case.*

Where the constitution authorizes each House to determine the rules of its proceedings, it must mean in those cases legislative, executive, or judiciary, submitted to them by the constitution, or in something relating to these, and necessary towards their execution. But orders and resolutions are sometimes entered in the journals, having no relation to these, such as acceptances of invitations to attend orations, to take part in processions, &c. These must be understood to be merely conventional among those who are willing to participate in the ceremony, and are therefore perhaps improperly placed among the records of the House.

Sec. XIX. PETITIONS.

A petition prays something. A remonstrance has no prayer. 1 *Grey*, 58.

Petitions must be subscribed by the petitioners. *Scob.* 87. *L. Parl. c.* 22. 9 *Grey*, 362, unless they are attending, 1 *Grey*, 401. or unable to sign, and averred by a member. 3 *Grey*, 418. But a petition not subscribed, but which the member presenting it affirmed to be all in the hand writing of the petitioner, and his name written in the beginning, was on the question (Mar. 14, 1800) received by the Senate. The averment of a member, or of somebody without doors, that they know the hand writing of the petitioners, is necessary if it be questioned. 6 *Grey*, 36. It must be presented by a member—not by the petitioners, and must be opened by him, holding it in his hand. 10 Grey, 57.

Before any petition or memorial addressed to the Senate shall be received and read at the table, whether

the same shall be introduced by the President or a member, a brief statement of the contents of the petition or memorial shall verbally be made by the introducer. Rule 24.

Regularly a motion for receiving it must be made and seconded, and a question put whether it shall be received? But a cry from the House of "received," or even its silence, dispenses with the formality of this question. It is then to be read at the table and disposed of.

Sec. XX. MOTIONS.

When a motion has been made, it is not to be put to the question, or debated until it is seconded. *Scob.* 21.

The Senate say no motion shall be debated until the same shall be seconded. *Rule* 6.

It is then and not till then in possession of the house, and cannot be withdrawn but by leave of the house. It is to be put into writing, if the house or speaker require it, and must be read to the house by the speaker as often as any member desires it for his information. 2 *Hats.* 82.

The rule of the Senate is, when a motion shall be made and seconded, it shall be reduced to writing, if desired by the president or any member, delivered in at the table, and read by the president before the same shall be debated. *Rule* 7.

It might be asked whether a motion for adjournment or for the orders of the day can be made by one member while another is speaking? It cannot. When two members offer to speak, he who rose first is to be heard, and it is a breach of order in another to interrupt him, unless by calling him to order if he departs from it. And the question of order being decided, he is still to be heard through. A call for adjournment, or for the order of the day, or for the question, by gentlemen from their seats, is not a motion. No motion can be made without rising and addressing the chair. Such calls are themselves breaches of order, which, though the member who has risen may respect, as an expression of im-

patience of the house against further debate, yet, if he chooses, he has a right to go on.

Sec. XXI. RESOLUTIONS.

When the house commands, it is by an 'order.' But facts, principles, their own opinions and purposes, are expressed in the form of resolutions.

A resolution, for an allowance of money to the clerks, being moved, it was objected to as not in order, and so ruled by the chair. But on an appeal to the Senate [i. e. *a call for their sense by the President on account of doubt in his mind according to Rule* 6.] *the decision was overruled.* Journ. Sen. June 1, 1796. *I presume the doubt was whether an allowance of money could be made otherwise than by bill.*

Sec. XXII. BILLS.

Every bill shall receive three readings, previous to its being passed; and the president shall give notice at each whether it be the 1st, 2d, or 3d; which readings shall be on three different days, unless the Senate unanimously direct otherwise. *Rule* 26.

Sec. XXIII. BILLS, LEAVE TO BRING IN.

One day's notice, at least, shall be given of an intended motion for leave to bring in a bill. Rule 25.

When a member desires to bring in a bill on any subject, he states to the house in general terms the causes for doing it, and concludes by moving for leave to bring in a bill entitled, &c. Leave being given, on the question, a committee is appointed to prepare and bring in the bill. The mover and seconder are always appointed of this committee, and one or more in addition. *Hakew.* 132. *Scob.* 40.

It is to be presented fairly written, without any erasure or interlineation, or the speaker may refuse it. *Scob.* 41. 1 *Grey*, 82. 84.

Sec. XXIV. BILLS, FIRST READING.

When a bill is first presented, the clerk reads it at the table, and hands it to the speaker, who, rising, states to the house the title of the bill, that this is the first time of reading it, and the question will be whether it shall be read a second time? Then sitting down to give an opening for objections, if none be made, he rises again and puts the question whether it shall be read a second time? *Hakew.* 137. 141. A bill cannot be amended at the first reading; 6 *Grey*, 286; nor is it usual for it to be opposed then: but it may be done, and rejected. *D'Ewes*, 335. *col* 1. 3 *Hats.* 198.

Sec. XXV. BILLS, SECOND READING.

The second reading must regularly be on another day. *Hakew.* 143. It is done by the clerk at the table, who then hands it to the speaker. The speaker rising, states to the house the title of the bill, that this is the second time of reading it, and that the question will be, whether it shall be committed, or engrossed and read a third time? But if the bill came from the other house, as it always comes engrossed, he states, that the question will be, whether it shall be read a third time? and before he hath so reported the state of the bill, no one is to speak to it. *Hakew.* 145, 146.

In the Senate of the United States, the President reports the title of the bill, that this is the second time of reading it, that it is now to be considered as in a committee of the whole, and the question will be, whether it shall be read a third time? or that it may be referred to a special committee?

Sec. XXVI. BILLS, COMMITMENT.

If on motion and question it be decided that the bill shall be committed, it may then be moved to be referred to a committee of the whole house, or to a special

committee. If the latter, the speaker proceeds to name the committee. Any member also may name a single person, and the clerk is to write him down as of the committee. But the house have a controlling power over the names and number, if a question be moved against any one, and may in any case put in and put out whom they please.

Those who take exceptions to some particulars in the bill, are to be of the committee. But none who speak directly against the body of the bill. For he that would totally destroy, will not amend it. *Hakew.* 146. *Town. coll.* 208. *D'Ewes*, 634. *col.* 2. *Scob.* 47. or as is said, *5 Grey*, 145, the child is not to be put to a nurse that cares not for it. 6 *Grey*, 373. It is therefore a constant rule 'that no man is to be employed in any matter who has declared himself against it.' And when any member who is against the bill hears himself named of its committee, he ought to ask to be excused. Thus, March 7, 1606, Mr. Hadley was, on the question's being put, excused from being of a committee, declaring himself to be against the matter itself. *Scob.* 46.

No bill shall be committed or amended until it shall have been twice read, after which it may be referred to a committee. Rule 27.

In the appointment of the standing committees, the Senate will proceed, by ballot, severally to appoint the chairman of each committee, and then, by one ballot, the other members necessary to complete the same; and a majority of the whole number of votes given shall be necessary to the choice of a chairman of a standing committee. All other committees shall be appointed by ballot, and a plurality of votes shall make a choice. When any subject or matter shall have been referred to a committee, any other subject or matter of a similar nature may, on motion, be referred to such committee. Rule 34.

The clerk may deliver the bill to any member of the committee. *Town. col.* 138. But it is usual to deliver it to him who is first named.

In some cases the house has ordered a committee to withdraw immediately into the committee chamber, and act on, and bring back the bill, sitting the house, *Scob.* 48. A committee meets when and where they please, if the house has not ordered time and place for them. 6 *Grey*, 370. But they can only act when to-

gether, and not by separate consultation and consent, nothing being the report of the committee but what has been agreed to in committee actually assembled.

A majority of the committee constitutes a quorum for business. *Elsynge's method of passing bills*, 11.

Any member of the house may be present at any select committee, but cannot vote, and must give place to all of the committee, and sit below them. *Elsynge*, 12. *Scob.* 49.

The committee have full power over the bill, or other paper committed to them, except that they cannot change the title or subject. 8 *Grey*, 228.

The paper before a committee, whether select, or of the whole, may be a bill, resolutions, draught of an address, &c. and it may either originate with them, or be referred to them. In every case, the whole paper is read first by the Clerk, and then by the chairman by paragraphs, *Scob.* 49. pausing at the end of each paragraph, and putting questions for amending, if proposed. In the case of resolutions on distinct subjects, originating with themselves, a question is put on each separately, as amended, or unamended, and no final question on the whole: 3 *Hats.* 276. but if they relate to the same subject, a question is put on the whole. If it be a bill, draught of an address, or other paper originating with them, they proceed by paragraphs, putting questions for amending, either by insertion or striking out, if proposed; but no question on agreeing to the paragraphs separately. This is reserved to the close, when a question is put on the whole, for agreeing to it as amended, or unamended. But if it be a paper referred to them, they proceed to put questions of amendment, if proposed, but no final question on the whole: because all parts of the paper having been adopted by the House, stand of course, unless altered, or struck out by a vote. Even if they are opposed to the whole paper, and think it cannot be made good by amendments, they cannot reject it, but

must report it back to the house without amendments, and there make their opposition.

The natural order in considering and amending any paper is, to begin at the beginning, and proceed thro' it by paragraphs; and this order is so strictly adhered to in parliament, that when a latter part has been amended, you cannot recur back and make any alteration in a former part. 2 *Hats.* 90. In numerous assemblies, this restraint is doubtless important: *But in the Senate of the United States, though in the main we consider and amend the paragraphs in their natural order, yet recurrences are indulged: and they seem, on the whole, in that small body, to produce advantages overweighing their inconveniences.*

To this natural order of beginning at the beginning, there is a single exception found in parliamentary usage. When a bill is taken up in Committee, or on its second reading, they postpone the preamble, till the other parts of the bill are gone through. The reason is, that on consideration of the body of the bill such alterations may therein be made as may also occasion the alteration of the preamble. *Scob.* 50. 7 *Grey*, 431.

On this head the following case occurred in the Senate, March 6, 1800: A resolution, which had no preamble, having been already amended by the House so that a few words only of the original remained in it, a motion was made to prefix a preamble, which having an aspect very different from the resolution, the mover intimated that he should afterwards propose a correspondent amendment in the body of the resolution. It was objected that a preamble could not be taken up till the body of the resolution is done with. But the preamble was received: because we are in fact through the body of the resolution, we have amended that as far as the amendments have been offered, and indeed till little of the original is left. It is the proper time, therefore, to consider a preamble: and whether the one offered be consistent with the resolution, is for the House to determine. The mover indeed has intimated that he shall offer a subsequent

proposition for the body of the resolution; but the House is not in possession of it; it remains in his breast, and may be withheld. The rules of the House can only operate on what is before them. *The practice of the Senate, too, allows recurrences backwards and forwards for the purposes of amendment, not permitting amendments in a subsequent, to preclude those in a prior part, or e converso.*

When the Committee is through the whole, a member moves that the Committee may rise, and the chairman report the paper to the House, with or without amendments, as the case may be. 2 *Hats.* 289. 292. *Scob.* 53. 2 *Hats.* 290. 8 *Scob.* 50.

When a vote is once passed in a Committee, it cannot be altered but by the House, their votes being binding on themselves. 1607, *June* 4.

The Committee may not erase, interline, or blot the bill itself; but must, in a paper by itself, set down the amendments, stating the words which are to be inserted or omitted, *Scob.* 50. and where, by references to the page, line, and word of the bill. *Scob.* 50.

Sec. XXVII. REPORT OF COMMITTEE.

The chairman of the Committee, standing in his place, informs the House that the Committee, to whom was referred such a bill, have, according to order, had the same under consideration, and have directed him to report the same without any amendment, or with sundry amendments, (as the case may be,) which he is ready to do when the House pleases to receive it. And he, or any other, may move that it be now received. But the cry of 'now, now,' from the House, generally dispenses with the formality of a motion and question. He then reads the amendments, with the coherence in the bill, and opens the alterations, and the reasons of the Committee for such amendments, until he has gone through the whole. He then delivers it at the Clerk's table, where the amendments reported are read by the Clerk, without the coherence, whereupon the papers lie upon the ta-

ble till the House at its convenience shall take up the report. *Scob.* 52. *Hakew.* 148.

The report being made, the Committee is dissolved, and can act no more without a new power. *Scob.* 51. But it may be revived by a vote, and the same matter recommitted to them. 4 *Grey*, 361.

Sec. XXVIII. BILL, RECOMMITMENT.

After a bill has been committed and reported, it ought not, in an ordinary course, to be recommitted. But in cases of importance, and for special reasons, it is sometimes recommitted, and usually to the same Committee. *Hakew.* 151. If a report be recommitted before agreed to in the House, what has passed in Committee is of no validity; the whole question is again before the Committee, and a new resolution must be again moved, as if nothing had passed. 3 *Hats.* 131. *note.*

In Senate, January, 1800, the salvage bill was recommitted three times after the commitment.

A particular clause of a bill may be committed without the whole bill. 3 *Hats.* 131. or so much of a paper to one, and so much to another committee.

Sec. XXIX. BILL, REPORT TAKEN UP.

When the report of a paper originating with a committee is taken up by the House, they proceed exactly as in committee. Here, as in committee, when the paragraphs have, on distinct questions, been agreed to seriatim, 5 *Grey*, 366. 6 *Grey*, 368. 8 *Grey*, 47. 104. 360. 1 *Torbuck's deb.* 125. 3 *Hats.* 348. no question needs be put on the whole report. 5 *Grey*, 381.

On taking up a bill reported with amendments, the amendments only are read by the Clerk. The Speaker then reads the first, and puts it to the question, and so on till the whole are adopted or rejected, before any other amendment be admitted, except it be an amendment to an amendment. *Elsynge's Mem.* 53. When

through the amendments of the committee, the Speaker pauses, and gives time for amendments to be proposed in the House to the body of the bill: as he does also if it has been reported without amendments; putting no questions but on amendments proposed: and when through the whole, he puts the question whether the bill shall be read a third time?

Sec. XXX. QUASI-COMMITTEE.

If on motion and question, the bill be not committed, or if no proposition for commitment be made, then the proceedings in the Senate of the United States, and in Parliament, are totally different. The former shall be first stated.

The 28th rule of the Senate says, "All bills, on a second reading, shall first be considered by the Senate in the same manner as if the Senate were in committee of the whole, before they shall be taken up and proceeded on by the Senate, agreeably to the standing rules, unless otherwise ordered:' [*that is to say, unless ordered to be referred to a Special Committee.*] *And when the Senate shall consider a treaty, bill, or resolution, as in Committee of the Whole, the Vice President, or President pro tempore, may call a member to fill the chair, during the time the Senate shall remain in Committee of the Whole; and the chairman so called, shall, during such time, have the powers of a President pro tempore.*

The proceeding of the Senate as in a Committee of the Whole, or in Quasi-Committee, is precisely as in a real Committee of the Whole, taking no questions but on amendments. When through the Whole, they consider the Quasi-Committee as risen, the House resumed, without any motion, question, or resolution to that effect, and the President reports that 'the House, acting as in a Committee of the Whole, have had under 'their consideration the bill intituled, &c., and have 'made sundry amendments which he will now report 'to the House.' The bill is then before them, as it would have been if reported from a Committee, and

questions are regularly to be put again on every amendment; which being gone through, the President pauses to give time to the House to propose amendments to the body of the bill; and when through, puts the question whether it shall be read a third time.

After progress in amending a bill in Quasi-Committee, a motion may be made to refer it to a Special Committee. If the motion prevails, it is equivalent in effect to the several votes that the Committee rise, the House resume itself, discharge the Committee of the Whole, and refer the bill to a Special Committee. In that case, the amendments already made fall. But if the motion fails, the Quasi-Committee stands in statu quo.

How far does this 28th rule subject the House when in quasi-committee, to the laws which regulate the proceedings of committees of the whole? The particulars in which these differ from proceedings in the House, are the following: 1. In a committee every member may speak as often as he pleases. 2. The votes of a committee may be rejected or altered when reported to the House. 3. A committee, even of the whole, cannot refer any matter to another committee. 4. In a committee no previous question can be taken. The only means to avoid an improper discussion, is to move that the committee rise: and if it be apprehended that the same discussion will be attempted on returning into committee, the House can discharge them, and proceed itself on the business, keeping down the improper discussion by the previous question. 5. A committee cannot punish a breach of order in the House, or in the gallery. 9 *Grey*, 113. It can only rise and report it to the House, who may proceed to punish. *The 1st and 2d of these peculiarities attach to the quasi-committee of the Senate, as every day's practice proves, and seem to be the only ones to which the 28th rule meant to subject them. For it continues to be a House, and therefore, though it acts in some respects as a committee, in others it preserves its character as a house. Thus, 3. it is in the daily habit of referring its business to a special committee. 4. It ad-*

mits of the previous question. If it did not, it would have no means of preventing an improper discussion; not being able, as a committee is, to avoid it by returning into the House: for the moment it would resume the same subject there, the 28th rule declares it again a quasi-committee. 5. It would doubtless exercise its powers as a House on any breach of order. 6. It takes a question by Yea and Nay, as the House does. 7. It receives messages from the President and the other House. 8. In the midst of a debate it receives a motion to adjourn, and adjourns as a House, and not as a committee.

SEC. XXXI. BILL, SECOND READING IN THE HOUSE.

In Parliament, after the bill has been read a second time, if, on the motion and question, it be not committed, or if no proposition for commitment be made, the Speaker reads it by paragraphs, pausing between each, but putting no question but on amendments proposed; and when through the whole, he puts the question whether it shall be read a third time? if it came from the other House: or, if originating with themselves, whether it shall be engrossed and read a third time? The Speaker reads sitting, but rises to put questions. The Clerk stands while he reads:

* *But the Senate of the United States is so much in the habit of making many and material amendments*

* The former practice of the Senate, referred to in this paragraph, has been changed by the following rule:

The final question, upon the second reading of every bill, resolution, constitutional amendment, or motion, originating in the Senate, and requiring three readings previous to being passed, shall be, "Whether it shall be engrossed and read a third time?" and no amendment shall be received for discussion at the third reading of any bill, resolution, amendment, or motion, unless by unanimous consent of the members present:

at the 3d reading, that it has become the practice not to engross a bill till it has passed. An irregular and dangerous practice; because, in this way, the paper which passes the Senate is not that which goes to the other House; and that which goes to the other House as the act of the Senate, has never been seen in Senate. In introducing numerous, difficult and illegible amendments into the text, the Secretary may, with the most innocent intentions, commit errors, which can never again be corrected.

The bill being now as perfect as its friends can make it, this is the proper stage for those fundamentally opposed to make their first attack. All attempts at earlier periods are with disjointed efforts; because, many who do not expect to be in favor of the bill ultimately, are willing to let it go on to its perfect state, to take time to examine it themselves, and to hear what can be said for it; knowing that, after all, they will have sufficient opportunities of giving it their veto. Its two last stages, therefore, are reserved for this, that is to say, on the question whether it shall be engrossed and read a third time? And lastly, whether it shall pass? The first of these is usually the most interesting contest; because, then the whole subject is new and engaging, and the minds of the members having not yet been declared by any trying vote, the issue is the more doubtful. In this stage, therefore, is the main trial of strength between its friends and opponents: and it behooves every one to make up his mind decisively for this question, or he loses the main battle; and accident and management

but it shall at all times be in order, before the final passage of any such bill, resolution, constitutional amendment, or motion, to move its commitment; and should such commitment take place, and any amendment be reported by the committee, the said bill, resolution, constitutional amendment, or motion, shall be again read a second time, and considered as in committee of the whole, and then the aforesaid question shall be again put. Rule 29.

may, and often do, prevent a successful rallying on the next and last question, whether it shall pass?

When the bill is engrossed, the title is to be endorsed on the back, and not within the bill. *Hakew.* 250.

SEC. XXXII. READING PAPERS.

Where papers are laid before the House, or referred to a committee, every member has a right to have them once read at the table, before he can be compelled to vote on them. But it is a great, though common error, to suppose that he has a right, toties quoties, to have acts, journals, accounts or papers on the table, read independently of the will of the house. The delay and interruption which this might be made to produce, evince the impossibility of the existence of such a right. There is, indeed, so manifest a propriety of permitting every member to have as much information as possible on every question on which he is to vote, that when he desires the reading, if it be seen that it is really for information, and not for delay, the Speaker directs it to be read, without putting a question, if no one objects. But if objected to, a question must be put. 2 *Hats.* 117, 118.

It is equally an error to suppose that any member has a right, without a question put, to lay a book or paper on the table, and have it read, on suggesting that it contains matter infringing on the privileges of the House. *ib.*

For the same reason a member has not a right to read a paper in his place, if it be objected to, without leave of the House. But this rigor is never exercised but where there is an intentional or gross abuse of the time and patience of the House.

A member has not a right even to read his own speech, committed to writing, without leave. This also is to prevent an abuse of time; and therefore is not refused, but where that is intended. 2 *Grey*, 227.

A report of a committee of the Senate on a bill from the House of Representatives being under consideration, on motion that the report of the commit-

tee on the House of Representatives on the same bill be read in Senate, it passed in the negative; *Feb.* 28, 1793.

Formerly, when papers were referred to a committee, they used to be first read: but of late, only the titles; unless a member insists they shall be read, and then no body can oppose it. 2 *Hats.* 117.

Sec. XXXIII. PRIVILEGED QUESTIONS.

* *While a question is before the Senate, no motion shall be received, unless for an amendment, for the previous question, or for postponing the main question, or to commit it, or to adjourn.* Rule 8.

It is no possession of a bill unless it be delivered to the clerk to be read, or the Speaker reads the title. *Lex Parl.* 274. *Elsynge, Mem.* 85. *Ord. House of Commons,* 64.

It is a general rule that the question first moved and seconded shall be first put. *Scob.* 28. 22. 2 *Hats.* 81. But this rule gives way to what may be called privileged questions; and the privileged questions are of different grades among themselves.

A motion to adjourn simply takes place of all others, for otherwise the House might be kept sitting against its will, and indefinitely. Yet this motion cannot be received after another question is actually put, and while the House is engaged in voting.

Orders of the day take place of all other questions, except for adjournment. That is to say, the question

* This rule has been modified so as to specify the questions entitled to preference.

The rule is now as follows:

When a question is under debate, no motion shall be received but to adjourn, to lie on the table, to postpone indefinitely, to postpone to a day certain, to commit, or to amend; which several motions shall have precedence in the order they stand arranged, and the motion for adjournment shall always be in order, and be decided without debate.

which is the subject of an order is made a privileged one, pro hac vice. The order is a repeal of the general rule as to this special case. When any member moves therefore for the orders of the day to be read, no further debate is permitted on the question which was before the House, for if the debate might proceed, it might continue through the day and defeat the order. This motion, to entitle it to precedence, must be for the orders generally, and not for any particular one; and if it be carried on the question, "Whether the House will now proceed to the orders of the day," they must be read and proceeded on in the course in which they stand: 2 *Hats.* 83. for priority of order gives priority of right, which cannot be taken away but by another special order.

After these there are other privileged questions which will require considerable explanation.

It is proper that every parliamentary assembly should have certain forms of question, so adapted as to enable them fitly to dispose of every proposition which can be made to them. Such are, 1. The previous question. 2. To postpone indefinitely. 3. To adjourn a question to a definite day. 4. To lie on the table. 5. To commit. 6. To amend. The proper occasion for each of these questions should be understood.

1. When a proposition is moved, which it is useless or inexpedient now to express or discuss, the previous question has been introduced for suppressing for that time the motion and its discussion. 3 *Hats.* 188, 189.

But as the previous question gets rid of it only for that day, and the same proposition may recur the next day, if they wish to suppress it for the whole of that session, they postpone it indefinitely. 3 *Hats.* 183. This quashes the proposition for that session, as an indefinite adjournment is a dissolution, or the continuance of a suit, sine die, is a discontinuance of it.

3. When a motion is made which it will be proper to act on, but information is wanted, or something more pressing claims the present time, the question or

debate is adjourned to such day within the session as will answer the views of the House. 2 *Hats.* 81. And those who have spoken before may not speak again when the adjourned debate is resumed. 2 *Hats.* 73. Sometimes, however, this has been abusively used by adjourning it to a day beyond the session, to get rid of it altogether, as would be done by an indefinite postponement.

4. When the House has something else which claims its present attention, but would be willing to reserve in their power to take up a proposition whenever it shall suit them, they order it to lie on their table. It may then be called for at any time.

5. If the proposition will want more amendment and digestion than the formalities of the House will conveniently admit, they refer it to a Committee.

6. But if the proposition be well digested, and may need but few and simple amendments, and especially if these be of leading consequence, they then proceed to consider and amend it themselves.

The Senate, in their practice, vary from this regular gradation of forms. Their practice, comparatively with that of Parliament, stands thus:

For the Parliamentary	*The Senate uses*
Postponement indefinite,	Postponement to a day beyond the session.
Adjournment,	Postponement to a day within the session.
Lying on the table,	Postponement indefinite. Lying on the table.

In their 8th rule, therefore, which declares that while a question is before the Senate, no motion shall be received unless it be for the *Pr. Qu.*, or to postpone, commit, or amend the main question, the term postponement must be understood according to their broad use of it, and not in its Parliamentary sense. Their rule then establishes as privileged questions, the previous question, postponement, commitment, and amendment.

But it may be asked, have these questions any privilege among themselves? Or are they so equal that the common principle of the 'first moved, first put,' takes place among them? This will need explanation. Their competitions may be as follow:

1. Previous Question and Postpone } Commit { Amend } In the 1st, 2d,
2. Postpone and Previous Question } Commit { Amend } and 3d classes,
3. Commit and Previous Question } Postpone { Amend } and the 1st member of the 4th class, the rule 'first moved first put,' takes place.
4. Amend and Previous Question } Postpone { Commit }

In the first class, where the *P. Q.* is first moved, the effect is peculiar. For it not only prevents the after motion to postpone or commit from being put to question before it, but also from being put after it. For, if the *P. Q.* be decided affirmatively, to wit, that the *M. Q.* shall *now* be put, it would of course be against the decision to postpone or commit. And if it be decided negatively, to wit, that the *M. Q.* shall not now be put, this puts the House out of possession of the *M. Q.*, and consequently there is nothing before them to postpone or commit. So that neither voting for or against the *P. Q.* will enable the advocates for postponing or committing to get at their object. Whether it may be amended shall be examined hereafter.

2d class. If postponement be decided affirmatively, the proposition is removed from before the house, and consequently there is no ground for the *Pr. Qu.* commitment, or amendment. But, if decided negatively, that it shall not be postponed, the *M. Q.*, may then be suppressed by the *P. Q.* or may be committed, or amended.

The 3d class is subject to the same observations as the 2d.

The 4th class. Amendment of the *Q. M.* first moved, and afterwards the *P. Q.*, the question of amendment shall be first put.

Amendment and postponement competing, postponement is first put, as the equivalent proposition to adjourn the *M. Q.* would be in parliament. The reason is that the question for amendment is not suppressed by postponing or adjourning the *M. Q.* but remains before the house whenever the *M. Q.* is resumed: and it might be that the occasion for other urgent business might go by, and be lost by length of debate on the amendment, if the house had it not in their power to postpone the whole subject.

Amendment and commitment. The question for committing, though last moved, shall be first put: because in truth it facilitates and befriends the motion to amend. *Scobell* is express. 'On a motion to amend a bill, any one may notwithstanding move to commit it, and the question for commitment shall be first put.' *Scob.* 46.

We have hitherto considered the case of two or more of the privileged questions contending for privilege between themselves, when both were moved on the original or *M. Q.*, but now let us suppose one of them to be moved, not on the original primary question, but on the secondary one, *e. g.*

Suppose a motion to postpone, commit, or amend the *M. Q.* and that it be moved to suppress that motion by putting a previous question on it. This is not allowed: because it would embarrass questions too much to allow them to be piled on one another several stories high; and the same result may be had in a more simple way, by deciding against the postponement, commitment, or amendment. 2 *Hats.* 81. 2. 3. 4.

Suppose a motion for the previous question or commitment or amendment of the main question, and that it be then moved to postpone the motion for the previous question, or for commitment or amendment of the main question. 1. It would be absurd to postpone the previous question, commitment, or amendment alone, and thus separate the appendage from its prin-

cipal. Yet it must be postponed separately from its original, if at all: because the 8th rule of Senate says that when a main question is before the house no motion shall be received but to commit, amend, or prequestion the original question, which is the parliamentary doctrine also. Therefore the motion to postpone the secondary motion for the previous question, or for committing or amending, cannot be received. 2. This is a piling of questions one on another, which, to avoid embarrassment, is not allowed. 3. The same result may be had more simply by voting against the previous question, commitment, or amendment.

Suppose a commitment moved of a motion for the previous question, or to postpone or amend. The 1st, 2d and 3d reasons before stated all hold good against this.

Suppose an amendment moved to a motion for the previous question. Answer. The previous question cannot be amended. Parliamentary usage, as well as the 9th rule of the Senate, has fixed its form to be 'shall the main question be now put?' *i. e.* at this instant. And as the present instant is but one, it can admit of no modification. To change it to to-morrow, or any other moment, is without example, and without utility. But suppose a motion to amend a motion for postponement, as to one day instead of another; or to a special, instead of an indefinite time. The useful character of amendment gives it a privilege of attaching itself to a secondary and privileged motion. That is, we may amend a postponement of a main question. So we may amend a commitment of a main question, as by adding, for example, 'with instructions to inquire, &c.' In like manner, if an amendment be moved to an amendment, it is admitted. But it would not be admitted in another degree; to wit, to amend an amendment to an amendment, of a *M. Q.* This would lead to too much embarrassment. The line must be drawn somewhere, and usage has drawn it after the amendment to the amendment. The same result must be sought by deciding against the amendment to the amendment, and then moving it again as it was wished to be amended. In this form it becomes only an amendment to an amendment.

When motions are made for reference of the same subject to a select committee, and to a standing committee, the question on reference to the standing committee, shall be first put. *Rule* 35.

In filling a blank with a sum, the largest sum shall be first put to the question by the 13*th rule of the Senate,** contrary to the rule of parliament, which privileges the smallest sum and longest time. 5 *Grey*, 179. 2 *Hats.* 8. 83. 3 *Hats*, 132, 133. And this is considered to be not in the form of an amendment to the question but as alternative or successive orignals. In all cases of time or number, we must consider whether the larger comprehends the lesser, as in a question to what day a postponement shall be, the number of a committee, amount of a fine, term of an imprisonment, term of an irredeemability of a loan, or the terminus in quem, in any other case. Then the question must begin a maximo. Or whether the lesser includes the greater, as in questions on the limitation of the rate of interest, on what day the session shall be closed by adjournment, on what day the next shall commence, when an act shall commence, or the terminus a quo in any other case, where the question must begin a minimo. The object being not to begin at that extreme, which, and more, being within every man's wish, no one could negative it, and yet, if he should vote in the affirmative, every question for more would be precluded; but at that extreme which would unite few, and then to advance or recede till you get to a number which will unite a bare majority. 3 *Grey*, 376, 384, 385. 'The fair question in this case is not that to which and more all will agree, but whether there shall be addition to the question.' 1 *Grey*, 365.

Another exception to the rule of priority is when a motion has been made to strike out, or agree to a paragraph. Motions to amend it are to be put to the question before a vote is taken on striking out, or agreeing to the whole paragraph.

But there are several questions, which, being inci-

* In filling up blanks, the largest sum and longest time shall be first put. *Rule* 13.

dental to every one, will take place of every one, privileged or not; to wit, a question of order arising out of any other question, must be decided before that question. 2 *Hats.* 88.

A matter of privilege arising out of any question, or from a quarrel between two members, or any other cause, supersedes the consideration of the original question, and must be first disposed of. 2 *Hats.* 88.

Reading papers relative to the question before the house. This question must be put before the principal one. 2 *Hats.* 88.

Leave asked to withdraw a motion. The rule of parliament being that a motion made and seconded is in possession of the house, and cannot be withdrawn without leave, the very terms of the rule imply that leave may be given, and consequently may be asked and put to the question.

Sec. XXXIV. THE PREVIOUS QUESTION.

When any question is before the house, any member may move a previous question, 'whether that question (called the main question) shall now be put?' If it pass in the affirmative, then the main question is to be put immediately, and no man may speak any thing further to it, either to add or alter. *Memor. in Hakew.* 28. 4 *Grey*, 27.

The previous question being moved and seconded, the question from the chair shall be, 'Shall the main question be now put?' and if the nays prevail, the main question shall not then be put.

This kind of question is understood by Mr. Hatsell to have been introduced in 1604. 2 *Hats.* 80. Sir Henry Vane introduced it. 2 *Grey*, 113, 114. 3 *Grey* 384. When the question was put in this form, 'Shall the main question be put?' A determination in the negative suppressed the main question during the session; but since the words 'now put' are used, they exclude it for the present only. Formerly indeed only till the present debate was over; 4 *Grey*, 43; but now for that day and no longer. 2 *Grey*, 113, 114.

Before the question 'Whether the main question shall now be put?' any person might formerly have spoken to the main question, because otherwise he would be precluded from speaking to it at all. *Mem. in Hakew.* 28.

The proper occasion for the previous question, is when a subject is brought forward of a delicate nature as to high personages, &c. or the discussion of which may call forth observations which might be of injurious consequences. Then the previous question is proposed: and in the modern usage, the discussion of the main question is suspended, and the debate confined to the previous question. The use of it has been extended abusively to other cases: but in these it has been an embarrassing procedure: its uses would be as well answered by other more simple parliamentary forms, and therefore it should not be favored, but restricted within as narrow limits as possible.

Whether a main question may be amended after the previous question on it has been moved and seconded? 2 *Hats.* 88. says, if the previous question has been moved and seconded, and also proposed from the chair, (by which he means stated by the Speaker for debate,) it has been doubted whether an amendment can be admitted to the main question. He thinks it may, after the previous question moved and seconded; but not after it has been proposed from the chair. In this case, he thinks the friends to the amendment must vote that the main question be not now put; and then move their amended question, which being made new by the amendment, is no longer the same which has been just suppressed, and therefore may be proposed as a new one. But this proceeding certainly endangers the main question, by dividing its friends, some of whom may choose it unamended, rather than lose it altogether: while others of them may vote, as Hatsell advises, that the main question be not now put, with a view to move it again in an amended form. The enemies of the main question, by this manœuvre to the previous question, get the enemies to the amendment added to them on the first vote, and throw the friends

of the main question under the embarrassment of rallying again as they can. To support his opinion, too, he makes the deciding circumstance, whether an amendment may or may not be made, to be, that the previous question has been proposed from the chair. But, as the rule is that the house is in possession of a question as soon as it is moved and seconded, it cannot be more than possessed of it by its being also proposed from the chair. It may be said, indeed, that the object of the previous question being to get rid of a question, which it is not expedient should be discussed, this object may be defeated by moving to amend, and, in the discussion of that motion, involving the subject of the main question. But so may the object of the previous question be defeated, by moving the amended question, as Mr. Hatsell proposes, after the decision against putting the original question. He acknowledges, too, that the practice has been to admit previous amendment, and only cites a few late instances to the contrary. On the whole, I should think it best to decide it ab inconvenienti, to wit; which is most inconvenient, to put it in the power of one side of the house to defeat a proposition by hastily moving the previous question, and thus forcing the main question to be put unamended; or to be put in the power of the other side to force on, incidentally at least, a discussion which would be better avoided? Perhaps the last is the least inconvenience; inasmuch as the speaker, by confining the discussion rigorously to the amendment only, may prevent their going into the main question, and inasmuch also as so great a proportion of the cases in which the previous question is called for, are fair and proper subjects of public discussion, and ought not to be obstructed by a formality introduced for questions of a peculiar character.

Sec. XXXV. AMENDMENTS.

On an amendment being moved, a member who has spoken to the main question may speak again to the amendment. *Scob.* 23.

If an amendment be proposed inconsistent with one already agreed to, it is a fit ground for its rejection by the house; but not within the competence of the speaker to suppress as if it were against order. For were he permitted to draw questions of consistence within the vortex of order, he might usurp a negative on important modifications, and suppress, instead of subserving, the legislative will.

Amendments may be made so as totally to alter the nature of the proposition; and it is a way of getting rid of a proposition, by making it bear a sense different from what it was intended by the movers, so that they vote against it themselves. 2 *Hats.* 79. 4. 82. 84. A new bill may be ingrafted by way of amendment on the words 'Be it enacted, &c.' 1 *Grey*, 190. 192.

If it be proposed to amend by leaving out certain words, it may be moved as an amendment to this amendment to leave out a part of the words of the amendment, which is equivalent to leaving them in the bill. 2 *Hats.* 80, 9. The parliamentary question is, always, whether the words shall stand part of the bill?

When it is proposed to amend by inserting a paragraph, or part of one, the friends of the paragraph may make it as perfect as they can by amendments, before the question is put for inserting it. If it be received, it cannot be amended afterwards, in the same stage; because the house has, on a vote, agreed to it in that form. In like manner, if it is proposed to amend by striking out a paragraph, the friends of the paragraph are first to make it as perfect as they can by amendments, before the question is put for striking it out. If on the question it be retained, it cannot be amended afterwards: because a vote against striking out is equivalent to a vote agreeing to it in that form.

When it is moved to amend, by striking out certain words, and inserting others, the manner of stating the question is first to read the whole passage to be amended as it stands at present, then the words proposed to be struck out, next those to be inserted, and lastly the whole passage as it will be when amended. And the question, if desired, is then to be divided, and put first

on striking out. If carried, it is next inserting the words proposed. If that be lost, it may be moved to insert others. 2 *Hats.* 80, 7.

A motion is made to amend by striking out certain words, and inserting others in their place, which is negatived. Then it is moved to strike out the same words, and to insert others of a tenor entirely different from those first proposed. It is negatived. Then it is moved to strike out the same words and insert nothing, which is agreed to. All this is admissible; because to strike out and insert A, is one proposition. To strike out and insert B, is a different proposition. And to strike out and insert nothing, is still different. And the rejection of one proposition does not preclude the offering a different one. Nor would it change the case were the first motion divided by putting the question first on striking out, and that negatived. For as putting the whole motion to the question at once would not have precluded, the putting the half of it cannot do it.*

But if it had been carried affirmatively to strike out the words and to insert A, it could not afterwards be permitted to strike out A, and insert B. The mover of B should have notified, while the insertion of A was under debate, that he would move to insert B. In which case those who preferred it would join in rejecting A.

* In the case of a division of the question and a decision against striking out, I advance doubtingly the opinion here expressed. I find no authority either way; and I know it may be viewed under a different aspect. It may be thought that, having decided separately not to strike out the passage, the same question for striking out cannot be put over again, though with a view to a different insertion. Still I think it more reasonable and convenient to consider the striking out, and insertion, as forming one proposition; but should readily yield to any evidence that the contrary is the practice in Parliament.

After A is inserted, however, it may be moved to strike out a portion of the original paragraph, comprehending A, provided the coherence to be struck out be so substantial as to make this effectively a different proposition. For then it is resolved into the common case of striking out a paragraph after amending it. Nor does any thing forbid a new insertion, instead of A and its coherence.

In Senate, January 25, 1798, a motion to postpone until the second Tuesday in February some amendments proposed to the constitution; the words "until the second Tuesday in February" were struck out by way of amendment. Then it was moved to add, "until the first day of June." Objected that it was not in order, as the question should be first put on the longest time; therefore, after a shorter time decided against, a longer cannot be put to question. It was answered that this rule takes place only in filling blanks for time. But when a specific time stands part of a motion, that may be struck out as well as any other part of the motion; and when struck out, a motion may be received to insert any other. In fact, it is not until they are struck out, and a blank for the time thereby produced, that the rule can begin to operate, by receiving all the propositions for different times, and putting the questions successively on the longest. Otherwise it would be in the power of the mover, by inserting originally a short time, to preclude the possibility of a longer. For till the short time is struck out, you cannot insert a longer; and if, after it is struck out, you cannot do it, then it cannot be done at all. Suppose the first motion had been to amend by striking out "the second Tuesday in February," and inserting instead thereof "the first of June." It would have been regular, then, to divide the question, by proposing first the question to strike out, and then that to insert. Now this is precisely the effect of the present proceeding; only instead of one motion and two questions, there are two motions and two questions, to effect it; the motion being divided as well as the question.

When the matter contained in two bills might be better put into one, the manner is to reject the one, and incorporate its matter into another bill by way of amendment. So if the matter of one bill would be better distributed into two, any part may be struck out by way of amendment, and put into a new bill. If a section is to be transposed, a question must be put on striking it out where it stands, and another for inserting it in the place desired.

A bill passed by the one House with blanks. These may be filled up by the other by way of amendments, returned to the first, as such, and passed. 3 *Hats.* 83.

The number prefixed to the section of a bill, being merely a marginal indication, and no part of the text of the bill, the clerk regulates that—the House or committee is only to amend the text.

Sec. XXXVI. DIVISION OF THE QUESTION.

If a question contain more parts than one, it may be divided into two or more questions. *Mem. in Hakew.* 29. But not as the right of an individual member, but with the consent of the House. For who is to decide whether a question is complicated or not? where it is complicated? into how many propositions it may be divided? The fact is, that the only mode of separating a complicated question is by moving amendments to it; and these must be decided by the House on a question: unless the House orders it to be divided: as on the question Dec. 2, 1640, making void the election of the knights for Worcester, on a motion it was resolved to make two questions of it, to wit, one on each knight. 2 *Hats.* 85, 86. So wherever there are several names in a question, they may be divided and put one by one. 9 *Grey*, 444. So 1729, April 17, on an objection that a question was complicated, it was separated by amendment. 2 *Hats.* 79.

The soundness of these observations will be evident from the embarrassments produced by the 12th rule of the Senate, which says, "if the question in debate contain several points, any member may have the same divided."

1798, May 30, the alien bill in quasi-committee. To a section and proviso in the original, had been added two new provisoes by way of amendment. On a motion to strike out the section as amended, the question was desired to be divided. To do this it must be put first on striking out either the former proviso, or some distinct member of the section. But when nothing remains but the last member of the section and the provisoes, they cannot be divided so as to put the last member to question by itself; for the provisoes might thus be left standing alone as exceptions to a rule when the rule is taken away; or the new provisoes might be left to a second question, after having been decided on once before at the same reading; which is contrary to rule. But the question must be on striking out the last member of the section as amended. This sweeps away the exceptions with the rule, and relieves from inconsistence. A question to be divisible, must comprehend points so distinct and entire, that one of them being taken away, the other may stand entire. But a proviso or exception, without an enacting clause, does not contain an entire point or proposition.

May 31. The same bill being before the Senate. There was a proviso that the bill should not extend, 1. To any foreign minister; nor 2. To any person to whom the president should give a passport; nor 3. To any alien merchant conforming himself to such regulations as the president shall prescribe; and a division of the question into its simplest elements was called for. It was divided into 4 parts, the 4th taking in the words 'conforming himself,' &c. It was objected that the words 'any alien merchant' could not be separated from their modifying words 'conforming,' &c. because these words, if left by themselves, containing no substantive idea, will make no sense. But admitting that the divisions of a paragraph into separate questions must be so made as that each part may stand by itself, yet the house having, on the question, retained the two first divisions, the words 'any alien merchant' may be struck out, and their modifying words will then attach themselves to the preced-

ing description of persons, and become a modification of that description.

When a question is divided, after the question on the 1st number, the 2d is open to debate and amendment: because it is a known rule that a person may rise and speak at any time before the question has been completely decided, by putting the negative as well as affirmative side. But the question is not completely put when the vote has been taken on the first member only. One half of the question, both affirmative and negative, remains still to be put. See *Execut. Journ. June 25, 1795.* The same decision by President Adams.

Sec. XXXVII. CO-EXISTING QUESTIONS.

It may be asked whether the house can be in possession of two motions or propositions at the same time? So that, one of them being decided, the other goes to question without being moved anew? The answer must be special. When a question is interrupted by a vote of adjournment, it is thereby removed from before the house, and does not stand ipso facto before them at their next meeting: but must come forward in the usual way. So, when it is interrupted by the order of the day. Such other privileged questions also as dispose of the main question, (*e. g.* the previous question, postponement, or commitment) remove it from before the house. But it is only suspended by a motion to amend, to withdraw, to read papers, or by a question of order or privilege, and stands again before the house when these are decided. None but the class of privileged questions can be brought forward while there is another question before the house, the rule being that when a motion has been made and seconded, no other can be received, except it be a privileged one.

Sec. XXXVIII. EQUIVALENT QUESTIONS.

If, on a question for rejection, a bill be retained, it passes of course to its next reading. *Hakew.* 141. *Scob.* 42. And a question for a second reading, deter-

mined negatively, is a rejection without farther question. 4 *Grey*, 149. And see *Elsynge's Memor.* 42, in what cases questions are to be taken for rejection.

Where questions are perfectly equivalent, so that the negative of the one amounts to the affirmative of the other, and leaves no other alternative, the decision of the one concludes necessarily the other. 4 *Grey*, 157. Thus the negative of striking out amounts to the affirmative of agreeing; and therefore to put a question on agreeing after that on striking out, would be to put the same question in effect twice over. Not so in questions of amendments between the two houses. A motion to recede being negatived, does not amount to a positive vote to insist, because there is another alternative, to wit, to adhere.

A bill originating in one House, is passed by the other with an amendment. A motion in the originating House to agree to the amendment is negatived. Does there result from this a vote of disagreement, or must the question on disagreement be expressly voted? The questions respecting amendments from another house are, 1st, To agree; 2d, disagree; 3d, recede; 4th, insist; 5th, adhere.

1st. To agree. } Either of these concludes the other
2d. To disagree. } necessarily, for the positive of either is exactly the equivalent of the negative of the other, and no other alternative remains. On either motion amendments to the amendment may be proposed; *e. g.* if it be moved to disagree, those who are for the amendment have a right to propose amendments, and to make it as perfect as they can, before the question of disagreeing is put.

3d. To recede. } You may then either insist or adhere.
4th. To insist. } You may then either recede or adhere.
5th. To adhere. } You may then either recede or insist.

Consequently the negative of these is not equivalent to a positive vote, the other way. It does not raise so

necessary an implication as may authorize the Secretary by inference to enter another vote: for two alternatives still remain, either of which may be adopted by the House.

Sec. XXXIX. THE QUESTION.

The question is to be put first on the affirmative, and then on the negative side.

After the Speaker has put the affirmative part of the question, any member who has not spoken before to the question, may rise and speak before the negative be put. Because it is no full question till the negative part be put. *Scob.* 23. 2 *Hats.* 73.

But in small matters, and which are of course, such as receiving petitions, reports, withdrawing motions, reading papers, &c. the Speaker most commonly supposes the consent of the House where no objections is expressed, and does not give them the trouble of putting the question formally. *Scob.* 22. 2 *Hats.* 87. 2, 87. 5 *Grey*, 129. 9 *Grey*, 301.

Sec. XL. BILLS, THIRD READING.

To prevent bills from being passed by surprise, the House, by a standing order, directs that they shall not be put on their passage before a fixed hour, naming one at which the House is commonly full. *Hakew.* 153.

The usage of the Senate is not to put bills on their passage till noon.

A bill reported and passed to the third reading cannot on that day be read the third time and passed. Because this would be to pass on two readings in the same day.

At the third reading the clerk reads the bill and delivers it to the speaker, who states the title, that it is the third time of reading the bill, and that the question will be whether it shall pass? Formerly the speaker, or those who prepared a bill, prepared also a breviate or summary statement of its contents, which the speaker read when he declared the state of the bill, at the

several readings. Sometimes, however, he reads the bill itself, especially on its passage. *Hakew.* 136, 137. 153. *Coke*, 22. 115. Latterly, instead of this, he, at the third reading, states the whole contents of the bill verbatim, only instead of reading the formal parts, 'Be it enacted,' &c. he states that 'the preamble recites so and so—the 1st section enacts that, &c.; the 2d section enacts,' &c.

But in the Senate of the United States, both of these formalities are dispensed with; the breviate presenting but an imperfect view of the bill, and being capable of being made to present a false one: and the full statement being an useless waste of time, immediately after a full reading by the clerk; and especially as every member has a printed copy in his hand.

A bill on the third reading is not to be committed for the matter or body thereof; but to receive some particular clause or proviso, it hath been sometimes suffered, but as a thing very unusual, *Hakew.* 156; thus, 27 *El.* 1584, a bill was committed on the third reading, having been formerly committed on the 2d, but is declared not usual. *D'Ewes*, 337. *col.* 2, 414. *col.* 2.

When an essential provision has been omitted, rather than erase the bill, and render it suspicious, they add a clause on a separate paper, engrossed and called a ryder, which is read and put to the question three times. *Elsynge's memorials*, 59. 6 *Grey*, 335. 1 *Blackst.* 183. For examples of ryders, see 3 *Hats.* 121, 122. 124. 126. Every one is at liberty to bring in a ryder without asking leave. 10 *Grey*, 52.

It is laid down as a general rule, that amendments proposed at a second reading shall be twice read, and those proposed at the third reading thrice read; as also all amendments from the other house. *Town. col.* 19. 23, 24, 25, 26, 27, 28.

It is with great and almost invincible reluctance, that amendments are admitted at this reading, which occasion erasures or interlineations. Sometimes a proviso has been cut off from a bill; sometimes erased. 9 *Grey*, 513.

This is the proper stage for filling up blanks; for if filled up before, and now altered by erasure, it would be peculiarly unsafe.

At this reading the bill is debated afresh, and for the most part is more spoken to, at this time, than on any of the former readings. *Hakew.* 153.

The debate on the question whether it should be read a third time? has discovered to its friends and opponents the arguments on which each side relies, and which of these appear to have influence with the house; they have had time to meet them with new arguments, and to put their old ones into new shapes. The former vote has tried the strength of the first opinion, and furnished grounds to estimate the issue; and the question now offered for its passage is the last occasion which is ever to be offered for carrying or rejecting it.

When the debate is ended, the speaker, holding the bill in his hand, puts the question for its passage, by saying, 'gentlemen, all you who are of opinion that this bill shall pass, say ay,' and after the answer of the ayes, 'all those of the contrary opinion say no.'— *Hakew.* 154.

After the bill is passed, there can be no further alteration of it in any point. *Hakew.* 159,

Sec. XLI. DIVISION OF THE HOUSE.

The affirmative and negative of the question having been both put and answered, the speaker declares whether the yeas or nays have it by the sound, if he be himself satisfied, and it stands as the judgment of the house. But if he be not himself satisfied which voice is the greater, or if, before any other member comes into the house, or before any new motion made, (for it is too late after that,) any member shall rise and declare himself dissatisfied with the speaker's decision, then the speaker is to divide the house. *Scob.* 24. 2 *Hats.* 140.

When the House of Commons is divided, the one party goes forth, and the other remains in the House. This has made it important which go forth, and which remain; because the latter gain all the indolent, the in-

different, and inattentive. Their general rule, therefore, is, that those who give their vote for the preservation of the orders of the House, shall stay in; and those who are for introducing any new matter or alteration, or proceeding contrary to the established course, are to go out. But this rule is subject to many exceptions and modifications. 2 *Hats.* 134. 1 *Rush. p.* 3. *fol.* 92. *Scob.* 43. 52. *Co.* 12. 116. *D'Ewes*, 505. *col.* 1. *Mem. in Hakew.* 25. 29. as will appear by the following statement of who go forth:

Petition that it be received,*	Ayes.
Read, - - -	
Lie on the table, - -	Noes.
Rejected after refusal to lie on table, - -	
Referred to a Committee, or farther proceeding, -	Ayes.
Bill, that it be brought in,	Ayes.
Read first or second time,	
Engrossed or read third time	
Proceeding on every other stage,	
Committed, - -	
To a Committee of the Whole,	Noes.
To a Select Committee, -	Ayes.
Report of a bill to lie on table,	Noes.
Be *now* read, - -	Ayes.
Be taken into consideration three months hence,	Ayes. 30, P. J. 251.
Amendments be read a second time,	Noes.
Clause offered on report of bill be read second time, -	Ayes.
For receiving a clause -	334.
With amendments be engrossed,	395.
That a bill be *now* read a third time,	Noes. 398.
Receive a ryder, - -	260.
Pass, - - - -	Ayes. 259.
Be printed, - - -	

* Noes. 9 Grey, 365.

Committees. That A. take the chair,	Noes, 291.
To agree to the whole or any part of report, - -	
That the House do *now* resolve into Committee, -	
Speaker. That he now leave the chair, after order to go into Committee, - -	
That he issue warrant for a new writ, - - -	
Member. That none be absent without leave, - -	
Witness. That he be further examined, - - -	Ayes, 344
Previous question, - -	Noes.
Blanks. That they be filled with the largest sum, -	Ayes.
Amendments. That words stand part of, - - -	
Lords. That their amendment be read a second time -	Noes.
Messenger be received, -	Ayes.
Orders of day to be now read, if before 2 o'clock,	
If after 2 o'clock, - -	Noes.
Adjournment. Till the next sitting day, if before 4 o'clock,	Ayes.
If after 4 o'clock, - -	Noes.
Over a sitting day, (unless a previous resolution,) -	Ayes.
Over the 30th of January,	Noes.
For sitting on Sunday, or any other day, not being a sitting day,	Ayes.

The one party being gone forth the speaker names two tellers from the affirmative, and two from the negative side, who first count those sitting in the House, and report the number to the speaker. Then they place themselves within the door, two on each side, and count those who went forth, as they come in, and report the number to the speaker. *Mem.* in *Hakew.* 26.

A mistake in the report of the tellers may be rectified after the report made. 2 *Hats.* 145. *note.*

But in both houses of Congress all these intricacies are avoided. The ayes first rise and are counted, standing in their places, by the President or Speaker. Then they sit, and the noes rise and are counted in like manner.

In Senate, if they be equally divided, the Vice-President announces his opinion, which decides.

The Constitution, however, has directed that 'the yeas and nays of the members of either house on any question, shall, at the desire of one-fifth of those present, be entered on the Journal.' And again, that in all cases of re-considering a bill, disapproved by the President, and returned with his objections, 'the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill, shall be entered on the Journals of each house respectively.'

By the 16th and 17th rules of the Senate, when the yeas and nays shall be called for by one-fifth of the members present, each member called upon shall, unless for special reasons he be excused by the Senate, declare, openly and without debate, his assent or dissent to the question. In taking the yeas and nays, and upon the call of the house, the names of the members shall be taken alphabetically.

When the yeas and nays shall be taken upon any question, in pursuance of the above rule, no member shall be permitted, under any circumstances whatever, to vote after the decision is announced from the Chair.

When it is proposed to take the vote by yeas and nays, the President or Speaker states that 'the question is whether, e. g. the bill shall pass? that it is proposed that the yeas and nays shall be entered on the Journal. Those, therefore, who desire it will rise.' If he finds and declares that one-fifth have risen, he then states that 'those who are of opinion that the bill shall pass, are to answer in the affirmative; those of the contrary opinion in the negative.' The clerk then calls over the names alphabetically, notes the yea or nay of each, and gives the list to the Presi-

dent or Speaker, who declares the result. In Senate if there be an equal division, the Secretary calls on the Vice-President, and notes his affirmative or negative, which becomes the decision of the house.

In the House of Commons, every member must give his vote the one way or the other. *Scob.* 24. As it is not permitted to any one to withdraw who is in the house when the question is put, nor is any one to be told in the division who was not in when the question was put. 2 *Hats.* 140.

This last position is always true when the vote is by yeas and nays; where the negative as well as affirmative of the question is stated by the President at the same time, and the vote of both sides begins and proceeds pari passu. It is true also when the question is put in the usual way, if the negative has also been put. But if it has not, the member entering, or any other member, may speak, and even propose amendments, by which the debate may be opened again, and the question be greatly deferred. And as some who have answered ay, may have been changed by the new arguments, the affirmative must be put over again. If, then, the member entering may, by speaking a few words, occasion a repetition of the question, it would be useless to deny it on his simple call for it.

While the House is telling, no member may speak, or move out of his place; for if any mistake be suspected, it must be told again. *Mem. in Hakew.* 26. 2 *Hats.* 143.

If any difficulty arises in point of order during the division, the speaker is to decide peremptorily, subject to the future censure of the House if irregular. He sometimes permits old experienced members to assist him with their advice, which they do, sitting in their seats, covered, to avoid the appearance of debate; but this can only be with the speaker's leave, else the division might last several hours. 2 *Hats.* 143.

The voice of the majority decides. For the lex majoris partis is the law of all councils, elections, &c., where not otherwise expressly provided. *Hakew.* 93. But if the House be equally divided, 'semper presu-

matur pro negante;' that is, the former law is not to be changed but by a majority. *Towns. col.* 134.

But in the Senate of the United States, the Vice-President decides, when the house is divided. Const. U. S. I. 3.

When, from counting the House, on a division, it appears that there is not a quorum, the matter continues exactly in the state in which it was before the division, and must be resumed at that point on any future day. 2 *Hats.* 126.

1606, May 1, on a question whether a member having said yea, may afterwards sit and change his opinion? a precedent was remembered by the speaker, of Mr. Morris, attorney of the wards in 39 *Eliz.* who in like case changed his opinion. *Mem. in Hakew.* 27.

SEC. XLII. TITLE.

After the bill has passed, and not before, the title may be amended, and is to be fixed by a question; and the bill is then sent to the other house.

SEC. XLIII. RECONSIDERATION.

*When a question has once been made, and carried in the affirmative or negative, it shall be in order for any member of the majority to move for the re-consideration thereof: but no motion for the reconsideration of any vote shall be in order after a bill, resolution, message, report, amendment, or motion upon which the vote was taken, shall have gone out of the possession of the Senate, announcing their decision; nor shall any motion for re-consideration be in order, unless made on the same day on which the vote was taken, or within the two next days of actual session of the Senate thereafter.** Rule 20.

1798, *Jan. A bill on its second reading being amended, and on the question whether it shall be read a third time, negatived, was restored by a decision to reconsider that question. Here the votes of negative and reconsideration, like positive and negative quan-*

* This part of the Rule has been added since the Manual was compiled.

tities in equation, destroy one another, and are as if they were expunged from the Journals. Consequently, the bill is open for amendment, just so far as it was the moment preceding the question for the third reading: that is to say all parts of the bill are open for amendment, except those on which votes have been already taken in its present stage. So, also, it may be recommitted.

* *The rule permitting a reconsideration of a question, affixing to it no limitation of time or circumstance, it may be asked whether there is no limitation? If, after the vote, the paper on which it is passed has been parted with, there can be no reconsideration: as if a vote has been for the passage of a bill, and the bill has been sent to the other House. But where the paper remains, as on a bill rejected; when, or under what circumstances does it cease to be susceptible of reconsideration? This remains to be settled; unless a sense that the right of reconsideration is a right to waste the time of the House in repeated agitations of the same question, so that it shall never know when a question is done with, should induce them to reform this anomalous proceeding.*

In parliament, a question, once carried, cannot be questioned again, at the same session; but must stand as the judgment of the house. *Towns. col.* 67. *Mem. in Hakew.* 33. And a bill once rejected, another of the same substance cannot be brought in again the same session. *Hakew.* 158. 6 *Grey*, 392. But this does not extend to prevent putting the same question in different stages of a bill; because every stage of a bill submits the whole and every part of it to the opinion of the house, as open for amendment, either by insertion or omission, though the same amendment has been accepted or rejected in a former stage. So in reports of committees, *e. g.* report of an address, the same question is before the house, and open for free discussion. *Towns. col.* 26.

* The Rule now fixes a limitation.

2 *Hats.* 98. 100, 101. So orders of the house, or instructions to committees, may discharged. So a bill, begun in one house, sent to the other, and there rejected, may be renewed again in that other, passed and sent back. *ib.* 92. 3 *Hats.* 161. Or if, instead of being rejected, they read it once and lay it aside, or amend it, and put it off a month, they may order in another to the same effect, with the same or a different title. *Hakew.* 97, 98.

Divers expedients are used to correct the effects of this rule; as by passing an explanatory act, if any thing has been omitted or ill expressed, 3 *Hats.* 278, or an act to enforce, and make more effectual an act, &c. or to rectify mistakes in an act, &c. or a committee on one bill may be instructed to receive a clause to rectify the mistakes of another. Thus, June 24, 1685, a clause was inserted in a bill for rectifying a mistake committed by a clerk in engrossing a bill of supply. 2 *Hats.* 194, 6. Or the session may be closed for one, two, three, or more days, and a new one commenced. But then all matters depending must be finished, or they fall, and are to begin de novo. 2 *Hats.* 94. 98. Or a part of the subject may be taken up by another bill, or taken up in a different way. 6 *Grey*, 304. 316.

And in cases of the last magnitude, this rule has not been so strictly and verbally observed as to stop indispensable proceedings altogether. 2 *Hats.* 92. 98. Thus when the address on the preliminaries of peace in 1782 had been lost by a majority of one, on account of the importance of the question, and smallness of the majority, the same question, in substance, though with some words not in the first, and which might change the opinion of some members, was brought on again and carried; as the motives for it were thought to outweigh the objection of form. 2 *Hats.* 99, 100.

A second bill may be passed to continue an act of the same session; or to enlarge the time limited for its execution. 2 *Hats.* 95. 98. This is not in contradiction to the first act.

Sec. XLIV. BILLS SENT TO OTHER HOUSE.

All bills passed in Senate, shall, before they are sent to the House of Representatives, be examined by a committee, consisting of three members, whose duty it shall be to examine all bills, amendments, resolutions, or motions, before they go out of the possession of the Senate, and to make report that they are correctly engrossed; which report shall be entered on the Journal. Rule 33.

A bill from the other House is sometimes ordered to lie on the table. 2 *Hats.* 97.

When bills, passed in one House and sent to the other, are grounded on special facts requiring proof, it is usual, either by message, or at a conference, to ask the grounds and evidence; and this evidence, whether arising out of papers, or from the examination of witnesses, is immediately communicated. 3 *Hats.* 48.

Sec. XLV. AMENDMENTS BETWEEN THE HOUSES.

When either House, *e. g.* the House of Commons, send a bill to the other, the other may pass it with amendments. The regular progression in this case, is, that the commons disagree to the amendment; the lords insist on it; the commons insist on their disagreement; the lords adhere to their amendment; the commons adhere to their disagreement. The term of insisting may be repeated as often as they choose to keep the question open. But the first adherence by either renders it necessary for the other to recede or adhere also; when the matter is usually suffered to fall. 10 *Grey*, 148. Latterly, however, there are instances of their having gone to a second adherence. There must be an absolute conclusion of the subject somewhere, or otherwise transactions between the Houses would become endless. 3 *Hats.* 268. 270. The term of insisting, we are told by Sir John Trevor, was then [1679] newly introduced into parliamentary usage, by the lords. 7 *Grey*, 94. It was certainly a happy innovation, as it multiplies the opportunities of trying modifications which may bring

the Houses to a concurrence. Either House, however, is free to pass over the term of insisting, and to adhere in the first instance. 10 *Grey*, 146. But it is not respectful to the other. In the ordinary parliamentary course, there are two free conferences at least before an adherence. 10 *Grey*, 147.

Either House may recede from its amendment and agree to the bill; or recede from their disagreement to the amendment, and agree to the same absolutely, or with an amendment. For here the disagreement and receding destroy one another, and the subject stands as before the disagreement. *Elsynge*, 23. 27. 9 *Grey*, 476.

But the House cannot recede from, or insist on its own amendment, with an amendment: for the same reason that it cannot send to the other House an amendment to its own act after it has passed the act. They may modify an amendment from the other House by ingrafting an amendment on it, because they have never assented to it; but they cannot amend their own amendment, because they have, on the question, passed it in that form. 9 *Grey*, 363. 10 *Grey*, 240. In Senate, March 29, 1798. Nor where one House has adhered to their amendment, and the other agrees with an amendment, can the first House depart from the form which they have fixed by an adherence.

In the case of a money bill, the lords proposed amendments become, by delay, confessedly necessary. The commons however refused them, as infringing on their privilege as to money bills; but they offered themselves to add to the bill a proviso to the same effect, which had no coherence with the lords amendments; and urged that it was an expedient warranted by precedent, and not unparliamentary in a case become impracticable, and irremediable in any other way. 3 *Hats.* 256. 266, 270, 271. But the lords refused, and the bill was lost. 1 *Chand.* 288. A like case, 1 *Chand.* 311. So the commons resolve that it is unparliamentary to strike out at a conference any thing in a bill which hath been agreed and passed by both Houses. 6 *Grey*, 274. 1 *Chand.* 312.

A motion to amend an amendment from the other House, takes precedence of a motion to agree or disagree.

A bill originating in one House is passed by the other with an amendment.

The originating House agrees to their amendment with an amendment. The other may agree to their amendment with an amendment; that being only in the 2d and not the 3d degree. For, as to the amending House, the first amendment with which they passed the bill, is a part of its text; it is the only text they have agreed to. The amendment to that text by the originating House, therefore, is only in the 1st degree, and the amendment to that again by the amending House is only in the 2d, to wit, an amendment to an amendment, and so admissible. Just so, when, on a bill from the originating House, the other, at its 2d reading, makes an amendment; on the 3d reading this amendment is become the text of the bill, and if an amendment to it be moved, an amendment to that amendment may also be moved, as being only in the 2d degree.

Sec. XLVI. CONFERENCES.

It is on the occasion of amendments between the Houses that conferences are usually asked: but they may be asked in all cases of difference of opinion between the two Houses on matters depending between them. The request of a conference, however, must always be by the House which is possessed of the papers. 3 *Hats.* 31. 1 *Grey*, 425.

Conferences may be either simple or free. At a conference simply, written reasons are prepared by the House asking it, and they are read and delivered without debate to the managers of the other House at the conference; but are not then to be answered. 4 *Grey*, 144. The other House then, if satisfied, vote the reasons satisfactory, or say nothing: if not satisfied, they resolve them not satisfactory, and ask a conference on the subject of the last conference, where they read and deliver in like manner written answers to those reasons.

3 *Grey*, 183. They are meant chiefly to record the justification of each house to the nation at large, and to posterity, and in proof that the miscarriage of a necessary measure is not imputable to them. 3 *Grey*, 255. At free conferences, the managers discuss, viva voce and freely, and interchange propositions for such modifications as may be made in a parliamentary way, and may bring the sense of the two Houses together. And each party reports in writing to their respective Houses, the substance of what is said on both sides, and it is entered in their journals. 9 *Grey*, 220. 3 *Hats.* 280. This report cannot be amended or altered, as that of a committee may be. *Journ. Senate, May* 24, 1796.

A conference may be asked, before the House asking it has come to a resolution of disagreement, insisting or adhering. 3 *Hats.* 269. 341. In which case the papers are not left with the other conferees, but are brought back to be the foundation of the vote to be given. And this is the most reasonable and respectful proceeding. For, as was urged by the lords on a particular occasion, 'it is held vain, and below the wisdom of parliament, to reason or argue against fixed resolutions, and upon terms of impossibility to persuade.' 3 *Hats.* 226. So the commons say, 'an adherence is never delivered at a free conference, which implies debate.' 10 *Grey*, 147. And on another occasion the lords made it an objection that the commons had asked a free conference after they had made resolutions of adhering. It was then affirmed, however, on the part of the commons, that nothing was more parliamentary than to proceed with free conferences after adhering, 3 *Hats.* 269. and we do in fact see instances of conference, or of free conference, asked after the resolution of disagreeing. 3 *Hats.* 251. 253. 260. 286. 291. 316. 349. of insisting, *ib.* 280. 296. 299. 319. 322. 355; of adhering, 269, 270. 283. 300, and even of a second or final adherence. 3 *Hats.* 270. And in all cases of conference asked after a vote of disagreement, &c. the conferees of the House asking it, are to leave the papers with the conferees of the other: and in one case where they refused to receive them, they

were left on the table in the conference chamber. *ib.* 271. 317. 323, 354. 10 *Grey*, 146.

After a free conference, the usage is to proceed with free conferences, and not to return again to a conference. 3 *Hats.* 270. 9 *Grey*, 229.

After a conference denied, a free conference may be asked. 1 *Grey*, 45.

When a conference is asked, the subject of it must be expressed, or the conference not agreed to; *Ord. H. Com.* 1 *Grey*, 425. 7 *Grey*, 31. They are sometimes asked to inquire concerning an offence or default of a member of the other House. 6 *Grey*, 181. 1 *Chand.* 304. Or the failure of the other House to present to the King a bill passed by both Houses, 8 *Grey*, 302. Or on information received, and relating to the safety of the nation, 10 *Grey*, 171. Or when the methods of parliament are thought by the one House to have been departed from by the other, a conference is asked to come to a right understanding thereon. 10 *Grey*, 148. So when an unparliamentary message has been sent, instead of answering it, they ask a conference. 3 *Grey*, 155. Formerly an address or articles of impeachment, or a bill with amendments, or a vote of the House, or concurrence in a vote, or a message from the king, were sometimes communicated by way of conference. 6 *Grey*, 128. 300. 387. 7 *Grey*, 80. 8 *Grey*, 210, 255. 1 *Torbuck's Deb.* 278. 10 *Grey*, 293. 1 *Chandler*, 49. 287. But this is not the modern practice. 8 *Grey*, 255.

A conference has been asked after the first reading of a bill. 1 *Grey*, 194. This is a singular instance.

Sec. XLVII. MESSAGES.

Messages between the houses are to be sent only while both houses are sitting. 3 *Hats.* 15. They are received during a debate, without adjourning the debate. 3 *Hats.* 22.

In Senate the messengers are introduced in any state of business except, 1. *While a question is putting.* 2. *While the yeas and nays are calling.* 3. *While*

the ballots are counting. Rule 46. *The first case is short: the second and third are cases where any interruption might occasion errors difficult to be corrected. So arranged, June* 15, 1798.

In the House of Representatives, as in parliament, if the house be in committee when a messenger attends, the speaker takes the chair to receive the message, and then quits it to return into committee, without any question or interruption. 4 *Grey*, 226.

Messengers are not saluted by the members, but by the speaker for the house. 2 *Grey*, 253. 274.

If messengers commit an error in delivering their message, they may be admitted, or called in to correct their message. 4 *Grey*, 41. Accordingly, March 13, 1809, the Senate having made two amendments to a bill from the House of Representatives, their secretary, by mistake, delivered one only; which being inadmissible by itself, that house disagreed, and notified the Senate of their disagreement. This produced a discovery of the mistake. The secretary was sent to the other house to correct his mistake, the correction was received, and the two amendments acted on de novo.

As soon as the messenger, who has brought bills from the other house, has retired, the speaker holds the bills in his hand, and acquaints the house 'that the other house have by their messenger sent certain bills,' and then reads their titles, and delivers them to the clerk, to be safely kept, till they shall be called for to be read. *Hakew.* 178.

It is not the usage for one house to inform the other by what numbers a bill has past. 10 *Grey*, 150. Yet they have sometimes recommended a bill, as of great importance to the consideration of the house to which it is sent. 3 *Hats.* 25. Nor when they have rejected a bill from the other house, do they give notice of it; but it passes sub silentio, to prevent unbecoming altercations. 1 *Blackst.* 183.

But in Congress the rejection is notified by message to the house in which the bill originated.

A question is never asked by the one house of the other by way of message, but only at a conference; for

this is an interrogatory, not a message. 3 *Grey*, 151 181.

When a bill is sent by one house to the other, and is neglected, they may send a message to remind them of it. 3 *Hats.* 25. 5 *Grey*, 154. But if it be mere inattention, it is better to have it done informally, by communications between the speakers, or members of the two houses.

Where the subject of a message is of a nature that it can properly be communicated to both houses of parliament, it is expected that this communication should be made to both on the same day. But where a message was accompanied with an original declaration, signed by the party to which the message referred, its being sent to one house, was not noticed by the other, because the declaration, being original, could not possibly be sent to both houses at the same time. 2 *Hats.* 260, 261, 262.

The king, having sent original letters to the commons, afterwards desires they may be returned, that he may communicate them to the lords. 1 *Chandler*, 303.

Sec. XLVIII. ASSENT.

The house which has received a bill and passed it may present it for the king's assent, and ought to do it, though they have not by message notified to the other their passage of it. Yet the notifying by message is a form which ought to be observed between the two houses from motives of respect and good understanding. 2 *Hats.* 242. Were the bill to be withheld from being presented to the king, it would be an infringement of the rules of parliament. *ib.*

When a bill has passed both houses of Congress, the house last acting on it, notifies its passage to the other, and delivers the bill to the Joint Committee of Enrollment, who see that it is truly enrolled in parchment. When the bill is enrolled, it is not to be written in paragraphs, but solidly, and all of a piece, that the blanks between the paragraphs may not give room for forgery. 9 *Grey*, 143. *It is then put into the hands of the Clerk of the house of Representatives*

to have it signed by the Speaker. The Clerk then brings it by way of message to the Senate to be signed by their President. The Secretary of the Senate returns it to the Committee of Enrollment, who present it to the President of the United States. If he approve, he signs, and deposits it among the rolls in the office of the Secretary of State, and notifies by message the House in which it originated that he has approved and signed it; of which that House informs the other by message. If the President disapproves he is to return it, with his objections, to that House in which it shall have originated; who are to enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the President's objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. If any bill shall not be returned by the President within ten days (Sundays excepted,) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return; in which case it shall not be a law. Const. U. S. I. 7.

Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary, (except on a question of adjournment,) shall be presented to the President of the United States, and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill. Const. U. S. I. 7.

Sec. XLIX. JOURNALS.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy. Const. I. 5.

The proceedings of the Senate, when not acting as in a Committee of the Whole, shall be entered on the journals, as concisely as possible, care being taken to detail a true account of the proceedings. Every vote of the Senate shall be entered on the journals, and a brief statement of the contents of each petition, memorial, or paper presented to the Senate, be also inserted on the journal. Rule 32.

The titles of bills, and such parts thereof only, as shall be affected by proposed amendments, shall be inserted on the journals. Rule 31.

If a question is interrupted by a vote to adjourn, or to proceed to the orders of the day, the original question is never printed in the journal, it never having been a vote, nor introductory to any vote: but when suppressed by the previous question, the first question must be stated in order to introduce and make intelligible the second. 2 *Hats.* 83.

So also when a question is postponed, adjourned, or laid on the table, the original question, though not yet a vote, must be expressed in the journals; because it makes part of the vote of postponement, adjourning, or lying it on the table.

Where amendments are made to a question, those amendments are not printed in the journals, separated from the question; but only the question as finally agreed to by the House. The rule of entering in the journals only what the House has agreed to, is founded in great prudence and good sense; as there may be many questions proposed which it may be improper to publish to the world, in the form in which they are made. 2 *Hats.* 85.

In both Houses of Congress, all questions whereon the yeas and nays are desired by one-fifth of the members present, whether decided affirmatively or negatively, must be entered in the journals. Const. I. 5.

The first order for printing the votes of the House of Commons, was October 30, 1685. 1 *Chandler*, 387.

Some judges have been of opinion that the journals of the House of Commons are no records, but only remembrances. But this is not law. *Hob.* 110, 111. *Lex.*

Parl. 114, 115. *Jour. H. C. Mar.* 17, 1592. *Hale. Parl.* 105. For the Lords in their House have power of judicature, the Commons in their House have power of judicature, and both Houses together have power of judicature; and the book of the Clerk of the House of Commons is a record, as is affirmed by act of Parl. 6 *H.* 8, *c.* 16. 4 *Inst.* 23, 24. and every member of the House of Commons hath a judicial place. 4 *Inst.* 15. As records they are open to every person, and a printed vote of either House is sufficient ground for the other to notice it. Either may appoint a Committee to inspect the journals of the other, and report what has been done by the other in any particular case. 2 *Hats.* 261. 3 *Hats.* 27. 30. Every member has a right to see the journals, and to take and publish votes from them. Being a record, every one may see and publish them. 6 *Grey*, 118, 119.

On information of a mis-entry or omission of an entry in the journal, a Committee may be appointed to examine and rectify it, and report it to the House. 2 *Hats.* 194, 5.

Sec. L. ADJOURNMENT.

The two Houses of Parliament have the sole, separate, and independent power of adjourning each their respective Houses. The king has no authority to adjourn them; he can only signify his desire, and it is in the wisdom and prudence of either House to comply with his requisition, or not, as they see fitting. 2 *Hats.* 232. 1 *Blackstone*, 186. 5 *Grey*, 122.

By the Constitution of the United States a smaller number than a majority may adjourn from day to day. I. 5. *But 'neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.'* I. 5. *And in case of disagreement, between them, with respect to the time of adjournment, the President may adjourn them to such time as he shall think proper.* Const. II. 3.

A motion to adjourn, simply, cannot be amended as by adding 'to a particular day.' But must be put simply 'that this House do now adjourn?' and if carried in the affirmative, it is adjourned to the next sitting day, unless it has come to a previous resolution, 'that at its rising it will adjourn to a particular day,' and then the House is adjourned to that day. 2 *Hats.* 82.

Where it is convenient that the business of the House be suspended for a short time, as for a conference presently to be held, &c., it adjourns during pleasure, 2 *Hats.* 305. Or for a quarter of an hour. 5 *Grey*, 331.

If a question be put for adjournment, it is no adjournment till the Speaker pronounces it. 5 *Grey*, 137. And from courtesy and respect, no member leaves his place till the Speaker has past on.

Sec. LI. A SESSION.

Parliament have three modes of separation, to wit: by adjournment, by prorogation, or dissolution by the king, or by the efflux of the term for which they were elected. Prorogation or dissolution constitutes there what is called a session; provided some act has passed. In this case all matters depending before them are discontinued, and at their next meeting are to be taken up de novo, if taken up at all. 1 *Blackst.* 186. Adjournment, which is by themselves, is no more than a continuance of the session from one day to another, or for a fortnight, a month, &c. ad libitum. All matters depending remain in statu quo, and when they meet again, be the term ever so distant, are resumed without any fresh commencement, at the point at which they were left. 1 *Lev.* 165. *Lex. Parl. c.* 2. 1 *Ro. Rep.* 29. 4 *Inst.* 7. 27, 28. *Hutt.* 61. 1 *Mod.* 252. *Ruffh. Jac. L. Dict. Parliament.* 1 *Blackst.* 186. Their whole session is considered in law but as one day, and has relation to the first day thereof. *Bro. Abr. Parliament*, 86.

Committees may be appointed to sit during a recess by adjournment, but not by prorogation. 5 *Grey*, 374. 9 *Grey*, 350. 1 *Chandler*, 50. Neither house can con-

tinue any portion of itself in any parliamentary function, beyond the end of the session, without the consent of the other two branches. When done, it is by a bill constituting them commissioners for the particular purpose.

Congress separate in two ways only, to wit, by adjournment, or dissolution by the efflux of their time. What then constitutes a session with them? A dissolution certainly closes one session, and the meeting of the new Congress begins another. The Constitution authorizes the President, 'on extraordinary occasions, to convene both Houses, or either of them.' I. 3. *If convened by the President's proclamation, this must begin a new session, and of course determine the preceding one to have been a session. So if it meets under the clause of the Constitution, which says, 'the Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.'* I. 4. *This must begin a new session. For even if the last adjournment was to this day, the act of adjournment is merged in the higher authority of the Constitution, and the meeting will be under that, and not under their adjournment. So far we have fixed land marks for determining sessions. In other cases it is declared by the joint vote authorizing the President of the Senate and the Speaker to close the session on a fixed day, which is usually in the following form: 'Resolved, by the Senate and House of Representatives, that the President of the Senate and the Speaker of the House of Representatives be authorized to close the present session by adjourning their respective Houses on the — day of —."*

When it was said above that all matters depending before Parliament were discontinued by the determination of the session, it was not meant for judiciary cases, depending before the House of Lords, such as impeachments, appeals, and writs of error. These stand continued, of course, to the next session. *Raym.* 120. 381. *Ruffh. Jac. L. D. Parliament.*

Impeachments stand in like manner, continued before the Senate of the United States.

Sec. LII. TREATIES.

The President of the United States has power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur. Const. U. S. II. 2.

Resolved, that all confidential communications, made by the President of the United States to the Senate, shall be, by the members thereof, kept secret; and that all treaties, which may hereafter be laid before the Senate, shall also be kept secret; until the Senate shall, by their resolution, take off the injunction of secrecy. Rule 38.

Treaties are legislative acts. A treaty is the law of the land. It differs from other laws only as it must have the consent of a foreign nation, being but a contract with respect to that nation. In all countries, I believe, except England, treaties are made by the legislative power: and there also, if they touch the laws of the land, they must be approved by Parliament. Ware *v.* Hylton. 3 *Dallas Rep.* 223. It is acknowledged, for instance, that the King of Great Britain cannot, by a treaty, make a citizen of an alien. *Vattel, b.* 1. *c.* 19. *sec.* 214. An act of Parliament was necessary to validate the American treaty of 1783. And abundant examples of such acts can be cited. In the cases of the treaty of Utrecht, in 1712, the commercial articles required the concurrence of Parliament. But a bill brought in for that purpose was rejected. France, the other contracting party, suffered these articles, in practice, to be not insisted on, and adhered to the rest of the treaty. 4 *Russel's Hist. Mod. Europe*, 457. 2 *Smollet*, 242. 246.

By the Constitution of the United States, this department of legislation is confided to two branches only of the ordinary legislature; the President originating, and the Senate having a negative. To what subjects this power extends, has not been defined in

detail by the Constitution; nor are we entirely agreed among ourselves. 1. *It is admitted that it must concern the foreign nation, party to the contract, or it would be a mere nullity, res inter alios acta.* 2. *By the general power to make treaties, the Constitution must have intended to comprehend only those subjects which are usually regulated by treaty, and cannot be otherwise regulated.* 3. *It must have meant to except out of these the rights reserved to the States; for surely the President and Senate cannot do by treaty what the whole Government is interdicted from doing in any way.* 4. *And also to except those subjects of legislation in which it gave a participation to the House of Representatives. This last exception is denied by some, on the ground that it would leave very little matter for the treaty power to work on. The less the better, say others. The Constitution thought it wise to restrain the executive and Senate from entangling and embroiling our affairs with those of Europe. Besides, as the negotiations are carried on by the executive alone, the subjecting to the ratification of the representatives such articles as are within their participation, is no more inconvenient than to the Senate. But the ground of this exception is denied as unfounded. For examine, e. g. the treaty of commerce with France, and it will be found that, out of* 31 *articles, there are not more than small portions of two or three of them which would not still remain as subjects of treaties, untouched by these exceptions.*

Treaties being declared, equally with the laws of the United States, to be the supreme law of the land, it is understood that an act of the legislature alone can declare them infringed and rescinded. This was accordingly the process adopted in the case of France in 1798.

It has been the usage for the executive, when it communicates a treaty to the Senate for their ratification, to communicate also the correspondence of the negotiators. This having been omitted in the case of the Prussian treaty, was asked by a vote of

the House, of Feb. 12, 1800, *and was obtained. And in Dec.* 1800, *the convention of that year between the United States and France, with the report of the negotiations by the envoys, but not their instructions, being laid before the Senate, the instructions were asked for and communicated by the President.*

The mode of voting on questions of ratification is by nominal call.

Whenever a treaty shall be laid before the Senate for ratification, it shall be read a first time for information only; when no motion to reject, ratify, or modify the whole, or any part, shall be received. Its second reading shall be for consideration, and on a subsequent day, when it shall be taken up as in a committee of the whole, and every one shall be free to move a question on any particular article, in this form, "Will the Senate advise and consent to the ratification of this article?" or to propose amendments thereto, either by inserting or by leaving out words, in which last case the question shall be, 'Shall the words stand part of the article?' And in every of the said cases, the concurrence of two-thirds of the Senators present shall be requisite to decide affirmatively. And, when through the whole, the proceedings shall be stated to the House, and questions be again severally put thereon for confirmation, or new ones proposed requiring in like manner a concurrence of two-thirds for whatever is retained or inserted.

The votes so confirmed shall, by the House, or a committee thereof, be reduced into the form of a ratification, with or without modifications, as may have been decided, and shall be proposed on a subsequent day, when every one shall again be free to move amendments, either by inserting or leaving out words; in which last case the question shall be, 'Shall the words stand part of the resolution?' And in both cases the concurrence of two-thirds shall be requisite to carry the affirmative; as well as on the final question to advise and consent to the ratification in the form agreed to. Rule 37.

When any question may have been decided by the Senate, in which two-thirds of the members present are necessary to carry the affirmative, any member who voted on that side which prevailed in the question, may be at liberty to move for a reconsideration; and a motion for reconsideration shall be decided by a majority of votes. Rule 44.

SEC. LIII. IMPEACHMENT.

The House of Representatives shall have the sole power of impeachment. Const. U. S. I. 3.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States. But the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law. Cons. I. 3.

The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. Const. II. 4.

The trials of crimes, except in cases of impeachment, shall be by jury. Const. III. 2.

These are the provisions of the Constitution of the United States on the subject of impeachments. The following is a sketch of some of the principles and practices of England on the same subject.

Jurisdiction. The lords cannot impeach any to themselves, nor join in the accusation, because they are the judges. *Seld. Judic. in Parl.* 12, 63. Nor can they proceed against a commoner but on complaint of the Commons. *Id.* 84. The lords may not, by the

law, try a commoner for a capital offence, on the information of the king or a private person; because the accused is entitled to a trial by his peers generally; but on accusation by the House of Commons, they may proceed against the delinquent, of whatsoever degree, and whatsoever be the nature of the offence; for there they do not assume to themselves trial at common law. The Commons are then instead of a jury, and the judgment is given on their demand, which is instead of a verdict. So the lords do only judge, but not try the delinquent. *Id.* 6, 7. But Wooddeson denies that a commoner can now be charged capitally before the lords, even by the Commons; and cites Fitzharris's case, 1681, impeached of high treason, where the lords remitted the prosecution to the inferior court. 8 *Grey's Deb.* 325—7. 2 *Wooddeson*, 601. 576. 3. *Seld.* 1610. 1619. 1641. 4. *Blackst.* 257. 3 *Seld.* 1604. 1618. 9. 1656.

Accusation. The Commons, as the grand inquest of the nation, become suitors for penal justice. 2 *Woodd.* 597. 6 *Grey*, 356. The general course is to pass a resolution containing a criminal charge against the supposed delinquent, and then to direct some member to impeach him by oral accusation, at the bar of the House of Lords, in the name of the Commons. The person signifies that the articles will be exhibited, and desires that the delinquent may be sequestered from his seat, or be committed, or that the peers will take order for his appearance. *Sachev. Trial.* 325. 2 *Wood.* 702. 605. *Lord's Journ* 3 *June*, 1701. 1 *Wms.* 616. 6 *Grey*, 324.

Process. If the party do not appear, proclamations are to be issued, giving him a day to appear. On their return they are strictly examined. If any error be found in them, a new proclamation issues, giving a short day. If he appear not, his goods may be arrested, and they may proceed. *Seld. Jud.* 98, 99.

Articles. The accusation (articles) of the Commons is substituted in place of an indictment. Thus, by the usage of Parliament, in impeachment for writing or speaking, the particular words need not be spe-

cified. *Sach. Tr.* 325. 2 *Wood.* 602. 605. *Lords' Journ.* 3 *June*, 1701. 1 *Wms.* 616.

Appearance. If he appears, and the case be capital, he answers in custody: though not if the accusation be general. He is not to be committed but on special accusations. If it be for a misdemeanor only, he answers, a lord in his place, a commoner at the bar, and not in custody, unless, on the answer, the lords find cause to commit him, till he find sureties to attend, and lest he should fly. *Seld. Jud.* 98, 99. A copy of the articles is given him, and a day fixed for his answer. *T. Ray.* 1 *Rushw.* 268. *Fost.* 232. 1 *Clar. Hist. of the Reb.* 379. On a misdemeanor, his appearance may be in person, or he may answer in writing, or by attorney. *Seld. Jud.* 100. The general rule on an accusation for a misdemeanor, is, that in such a state of liberty or restraint as the party is when the Commons complain of him, in such he is to answer. *Id.* 101. If previously committed by the Commons, he answers as a prisoner. But this may be called in some sort judicium parium suorum. *Id.* In misdemeanors the party has a right to counsel by the common law, but not in capital cases. *Seld. Jud.* 102—5.

Answer. The answer need not observe great strictness of form. He may plead guilty, as to part, and defend as to the residue; or, saving all exceptions, deny the whole, or give a particular answer to each article separately. 1 *Rush.* 274. 2 *Rush.* 1374. 12 *Parl. Hist.* 442. 3 *Lords' Journ.* 13 *Nov.* 1643. 2 *Wood.* 607. But he cannot plead a pardon in bar to the impeachment. 2 *Wood.* 615. 2 *St. Tr.* 735.

Replication, Rejoinder, &c. There may be a replication, rejoinder, &c. *Sel. Jud.* 114. 8 *Grey's Deb.* 233. *Sach. Tr.* 15. *Jour. H. of Commons*, 6 *March*, 1640, 1.

Witnesses. The practice is to swear the witnesses in open house, and then examine them there: or a committee may be named, who shall examine them in committee, either on interrogatories agreed on in the house, or such as the committee in their discretion shall demand. *Seld. Jud.* 120. 123.

Jury. In the case of Alice Pierce, 1 *R.* 2. a jury was empannelled for her trial before a committee. *Seld. Jud.* 123. But this was on a complaint, not on impeachment by the Commons. *Seld. Jud.* 163. It must also have been for a misdemeanor only, as the lords spiritual sat in the case, which they do on misdemeanors, but not in capital cases. *Id.* 148. The judgment was a forfeiture of all her lands and goods. *Id.* 188. This, Selden says, is the only jury he finds recorded in Parliament for misdemeanors: but he makes no doubt, if the delinquent doth put himself on the trial of his country, a jury ought to be empannelled, and he adds that it is not so on impeachment by the Commons; for they are in loco proprio, and there no jury ought to be empannelled. *Id.* 124. The Ld. Berkeley, 6 *E.* 3. was arraigned for the murder of *L.* 2. on an information on the part of the king, and not on impeachment of the Commons; for then they had been patria sua. He waived his peerage, and was tried by a jury of Gloucestershire and Warwickshire. *Id.* 125. In 1 *H.* 7. the Commons protest that they are not to be considered as parties to any judgment given, or hereafter to be given in Parliament. *Id.* 133. They have been generally, and more justly considered, as is before stated, as the grand jury. For the conceit of Selden is certainly not accurate, that they are the patria sua of the accused, and that the lords do only judge, but not try. It is undeniable that they do try. For they examine witnesses as to the facts, and acquit or condemn, according to their own belief of them. And lord Hale says, 'the peers are judges of law as well as of fact.' 2 *Hale, P. C.* 275. Consequently of fact as well as of law.

Presence of Commons. The Commons are to be present at the examination of witnesses. *Seld. Jud.* 124. Indeed they are to attend throughout, either as a committee of the whole house, or otherwise, at discretion, appoint managers to conduct the proofs. *Rushw. Tr of Straff.* 37. *Com. Journ.* 4 *Feb.* 1709—10. 2 *Woodd.* 614. And judgment is not to be given till they demand it. *Seld. Jud.* 124. But they are not

to be present on impeachment when the Lords consider of the answer or proofs, and determine of their judgment. Their presence, however, is necessary at the answer and judgment in cases capital. *Id.* 58. 159, as well as not capital, 162. The Lords debate the judgment among themselves. Then the vote is first taken on the question of guilty or not guilty; and if they convict, the question, or particular sentence, is out of that which seemeth to be most generally agreed on. *Seld. Jud.* 167. 2 *Woodd.* 612.

Judgment. Judgments in Parliament, for death, have been strictly guided per legem terræ, which they cannot alter: and not at all according to their discretion. They can neither omit any part of the legal judgment, nor add to it. Their sentence must be secundum, non ultra legem. *Seld. Jud.* 168—171. This trial, though it varies in external ceremony, yet differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crimes and punishments, prevail. For impeachments are not framed to alter the law, but to carry it into more effectual execution against too powerful delinquents. The judgment, therefore, is to be such as is warranted by legal principles or precedents. 6 *Sta. Tr.* 14. 2 *Woodd.* 611. The Chancellor gives judgment in misdemeanors; the Lord High Steward formerly in cases of life and death. *Seld. Jud.* 180. But now the Steward is deemed not necessary. *Forst.* 144. 2 *Woodd.* 613. In misdemeanors the greatest corporal punishment hath been imprisonment. *Seld. Jud.* 184. The king's assent is necessary in capital punishments, (but 2 *Woodd.* 614, contra) but not in misdemeanors. *Seld. Jud.* 136.

Continuance. An impeachment is not discontinued by the dissolution of Parliament; but may be resumed by the new Parliament, *T. Ray.* 383. 4 *Com. Journ.* 23 *Dec.* 1790. *Lords' Jour. May* 16, 1791. 2 *Woodd.* 618.

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